

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL  
76-5013

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\_\_\_\_\_  
Docket No. 76-5013  
\_\_\_\_\_

B  
P/S

In The Matter of W. T. GRANT COMPANY,

Debtor-in-Possession

BALTIMORE GAS AND ELECTRIC COMPANY,

Petitioner-Appellant

-v-

W.T. GRANT COMPANY,

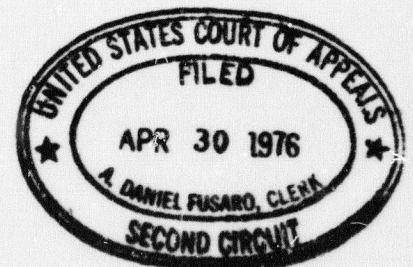
Respondent-Appellee

\_\_\_\_\_  
APPEAL FROM AN ORDER OF THE DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
JOINT APPENDIX  
\_\_\_\_\_

LeBoeuf, Lamb, Leiby & MacRae,  
Attorneys for Petitioner-  
Appellant, Baltimore Gas  
and Electric Company  
140 Broadway  
New York, New York 10005  
(212) 269-1100

Wachtell, Lipton, Rosen & Katz,  
Attorneys for Respondent-  
Appellee, W.T. Grant Company  
299 Park Avenue  
New York, New York 10017  
(212) 371-9200



PAGINATION AS IN ORIGINAL COPY



IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

Docket No. 76-5013

---

In The Matter of W. T. GRANT COMPANY,

Debtor-in-Possession

BALTIMORE GAS AND ELECTRIC COMPANY,

Petitioner-Appellant

-v-

W.T. GRANT COMPANY,

Respondent-Appellee

---

APPEAL FROM AN ORDER OF THE DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

---

JOINT APPENDIX

---

LeBoeuf, Lamb, Leiby & MacRae,  
Attorneys for Petitioner-  
Appellant, Baltimore Gas  
and Electric Company  
140 Broadway  
New York, New York 10005  
(212) 269-1100

Wachtell, Lipton, Rosen & Katz,  
Attorneys for Respondent-  
Appellee, W.T. Grant Company  
299 Park Avenue  
New York, New York 10017  
(212) 371-9200



INDEX TO JOINT APPENDIX

1. Application on behalf of W.T. Grant Company for Order Authorizing Debtor-in-Possession to Operate and Manage Business, To Use Collateral, To Borrow Money and Issue Certificates of Indebtedness, dated October 2, 1975, including Exhibits "A" and "D" thereto..... JA-1
2. Order of Honorable John J. Galgay, Bankruptcy Judge, dated October 2, 1975, Authorizing W.T. Grant Company, Debtor-in-Possession, To Operate and Manage Business, To Use Collateral, To Borrow Money and Issue Certificates of Indebtedness.... JA-24
3. Order to show cause and Petition of Baltimore Gas and Electric Company for a two month deposit as security for continued gas and electric service to W.T. Grant Company (with exhibits), dated October 24, 1975..... JA-31
4. Supplemental Order Enjoining Baltimore Gas and Electric Company From Discontinuing Service to Debtor-in-Possession, dated October 20, 1975..... JA-42
5. Affidavit of Robert J. Kelly on behalf of W.T. Grant Company, dated October 28, 1975, in opposition to petition of Baltimore Gas and Electric Company..... JA-48
6. Affidavit of W. A. Harvey on behalf of Baltimore Gas and Electric Company, dated October 31, 1975, in support of petition of Baltimore Gas and Electric Company..... JA-54
7. Transcripts of hearings held October 29 and November 5, 1975 relating to petition of Baltimore Gas and Electric Company..... JA-58
8. Order of Bankruptcy Judge Galgay, dated November 17, 1975, denying petition of Baltimore Gas and Electric Company, together with notice of entry thereof, dated November 19, 1975..... JA-119
9. Notice of Appeal to District Court by Baltimore Gas and Electric Company, dated November 19, 1975..... JA-123



10. Designation of Contents of Record on Appeal and Statement of Issues on appeal to District Court by Baltimore Gas and Electric Company, dated November 28, 1975..... JA-125
11. Designation of Additional Papers To Be Included In Record On Appeal to District Court by W.T. Grant Company, dated December 3, 1975..... JA-127
12. Opinion of Constance Baker Motley, District Judge, dated February 20, 1976, together with notice of entry thereof, dated February 20, 1976..... JA-129
13. Notice of Appeal to Second Circuit by Baltimore Gas and Electric Company dated March 3, 1976..... JA-144



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re : In Proceedings for  
W. T. GRANT COMPANY, : an Arrangement  
Debtor. : No. 75 B  
-----x

APPLICATION FOR ORDER AUTHORIZING  
DEBTOR-IN-POSSESSION TO OPERATE AND  
MANAGE BUSINESS, TO USE COLLATERAL,  
TO BORROW MONEY AND ISSUE CERTIFICATES  
OF INDEBTEDNESS

TO THE HONORABLE BANKRUPTCY JUDGE:

The application of W.T. Grant Company, the above-named debtor, respectfully represents:

1. Concurrently with the submission hereof, Applicant is filing a petition for an arrangement under Chapter XI Rule 11-6.
2. Applicant desires to continue the operation of Applicant's business and the management of Applicant's property as debtor-in-possession in accordance with Chapter XI Rule 11-23.
3. Applicant intends to propose an arrangement with its general unsecured creditors pursuant to the provisions of Chapter XI of the Bankruptcy Act. The feasibility of any proposed arrangement is entirely dependent upon the continued operation of Applicant's business and management of its property.
4. Applicant is engaged in the business of operating and managing retail outlets for the sale of general lines of merchandise. Applicant operates a total of 1070 stores -- 533 under the name "Grant City" and 537 under the name "Grants." Appli-



cant's stores are located in 40 states, and occupy a gross area of approximately 52,000,000 square feet. During its fiscal year ended January 30, 1975, Applicant had sales of \$1,761,952,000, making it the 5th largest retail business in the United States, exclusive of supermarket chains and the 17th largest retail business overall. Applicant has over 62,000 employees. In addition to its retail business, Applicant owns 100% of the capital stock of Jones and Presnell Studios, Inc., a photography business, 100% of the capital stock of GIS International Merchandising Corporation, which imports foreign made goods for domestic sale to Applicant and other retailers and 100% of the capital stock of Gran-jewel Jewelers and Distributors, Inc., a jewelry catalogue showroom business. Applicant also owns 100% of the stock of W. T. Grant Financial Corporation, which operates solely as an aid to the financing of Applicant's operations, and holds a majority stock interest in Zeller's Limited, a Canada-based retailer.

5. „ It is desirable and in the best interests of the Applicant's estate, its creditors and stockholders that Applicant, as debtor-in-possession, continue the operation of the Applicant's business and the management of its assets during the pendency of this Chapter XI case. Historically, Applicant's business has operated on a profitable and viable basis. Applicant suffered its first operating loss in its 69 year history for the fiscal year ending January 30, 1975. Additional losses have been experienced in the current year. Such losses were due to a variety of factors, including over-expansion involving the opening or enlargement of approximately 439 stores between the fiscal years ended 1969 and 1974, the entry into leases upon terms and at locations which have proven to be unfavorable, over-expansion of certain lines of



merchandise, especially major appliances and furniture, inadequate inventory control and an over-liberal credit policy which resulted in excessive charge-offs and bad debts. Also contributing to the losses was the general downturn in the economy. The effect of such losses was to discourage many suppliers from extending credit and ultimately to refrain from shipping goods to Applicant upon any terms, despite repeated attempts by Applicant and its institutional creditors to induce suppliers to ship to Applicant.

6. Traditionally, the forthcoming Christmas season is the best sales period in the retail sales industry and Applicant has historically achieved its best operating results during this period. Applicant believes that the protection afforded Applicant under Chapter XI will enable it to replenish its inventories and take advantage of the seasonal upturn. Applicant anticipates that if it is allowed to continue its operations during this period that sufficient cash flow will be generated to enable Applicant to continue its operations into the new calendar year and to put Applicant into a position to successfully implement the economies in operations and other changes it proposes to make. If Applicant is not permitted to continue its operations as debtor-in-possession and a forced liquidation of Applicant's properties were ordered, a substantial loss would result to the estate and its creditors. Moreover, over 62,000 employees would lose their jobs, with the attendant hardships imposed on their families and communities. In some areas of the nation, Applicant is one of the largest employers. Thus, for example, Applicant is the fifth largest employer in the State of Maine. The consequences of a discontinuance of Applicant's operations on the economy of those areas would be particularly damaging. Moreover, since Applicant is



the 6th largest retailer in the nation exclusive of supermarket chains and the 17th largest retailer over-all, such a discontinuance would have grave and severe repercussions in virtually all aspects of the nation's economy.

7. In contrast, if Applicant is allowed to continue its operations and take the rehabilitative steps described below, values far in excess of those realizable in a forced liquidation would accrue to the benefit of all creditors of Applicant. Given sufficient time under the protection of the Chapter XI court, Applicant will be able to effectuate economies in its operations and propose a plan in the best interests of its creditors. Within the purview of Chapter XI unprofitable operations will be terminated and operations of profitable stores enhanced. A key aspect of such program will be the rejection of a substantial number of Applicant's leases and the attempted modifications of other leases, with a consequent saving in rental expenses, which now total approximately \$115,000,000 per year for all of Applicant's leases. Applicant has already commenced programs to phase out its major appliance business, close its appliance service centers, tighten its credit policies and inventory controls, lease certain departments within its stores, lease vacant space within its stores and its New York home office, and eliminate unprofitable product lines -- all of which will substantially reduce Applicant's operating expense. In order to implement this program, it is essential that Applicant be able to operate its business and manage its property as debtor-in-possession. Termination of operations for even a limited period of time would destroy the goodwill of Applicant's business and severely prejudice the interests of its estate, its creditors and stockholders and would cause the loss of over 62,000 jobs.



8. Applicant estimates that for the 30-day period subsequent to the filing of the petition herein, operation of Applicant's business will result in a loss of approximately \$10,700,000. Applicant's estimated sales in such period will be \$111,600,000, consisting primarily of revenues from the sale of merchandise. The estimated expenses of operating Applicant's business for the next thirty (30) days are \$122,345,000, consisting of the following items:

- (a) Cost of inventory -- \$73,500,000;
- (b) Wages to employees exclusive of the Applicant's officers and directors -- \$24,000,000;
- (c) Wages of officers and directors -- \$145,000;
- (d) Advertising -- \$3,200,000;
- (e) Rental expense -- \$9,200,000;
- (f) Other operating expenses, including utilities, taxes and administrative overhead -- \$12,200,000.

9. It is essential to the efficient operation of Applicant's business that Applicant, as debtor-in-possession, have full power and authority to (a) to employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees and servants, except executive officers, stockholders and directors of Applicant, as may be necessary and advisable for the proper operation of such business and the management and preservation



of Applicant's property; (b) pay and satisfy out of any funds now or hereafter coming into its possession all claims for wages, salaries and compensation of all managers, agents, employees and servants, except executive officers, stockholders and directors of Applicant, for services hereafter rendered; (c) buy and sell merchandise, supplies and other property and to render services for cash or on credit; (d) purchase or otherwise acquire for cash or on credit such materials, equipment, machinery, supplies, services, or other property as it may deem necessary and advisable in connection with the operation of Applicant's business and the management and preservation of its property, and to pay for any such purchases made on credit when due; (e) to enter into any contract incidental to the normal and usual operation of said business and the management and preservation of Applicant's property; (f) keep the property of the within estate insured in such manner and to such extent as it may deem necessary and advisable; (g) collect and receive all rents, issues, income and profits and all outstanding accounts, things in action and credits due or to become due to the estate herein and to hold and retain all moneys thus received to the end that the same may be applied under the pre-fixed order or further orders of this Court; and (h) pay and discharge out of any funds now or hereafter coming into its hands, all taxes and similar charges lawfully incurred in the operation of Applicant's business and the preservation and maintenance of its property subsequent to the filing of the petition herein.

10. Applicant's books of account will be closed as of the close of business on the date of the entry of an order authorizing the operation of Applicant's business and the management of its property, and new books of account will be opened as of



the opening of business on the next succeeding business day, in which new books will be kept proper accounts of the earnings, expenses, receipts, disbursements and all other obligations incurred by the debtor-in-possession, as well as transactions had in the operation of Applicant's business and the management, preservation and protection of the property of the within estate. In addition, the debtor-in-possession will preserve proper vouchers for all payments made on account of such disbursements.

11. Applicant requests authorization to dispense with the requirements of Bankruptcy Rule XI-5, subdivision 1, which requires "a verified weekly statement of cash receipts and disbursements setting forth the names of the persons to whom payments have been made, the amounts of the payments, the consideration, and where payments are to employees, the amounts of the deductions for withholding and social security taxes and whether or not such deductions have been deposited in a special account" for the reason that Applicant has 1070 stores and warehouses and sales offices throughout the United States and it would be a great hardship if not a physical impossibility in these circumstances to strictly comply with this rule. Similarly, Applicant requests authorization to dispense with the requirements of Rule XI-5, subdivision 2(d), which requires the submission of "a detailed inventory on hand at the beginning of the month and a detailed inventory on hand at the end of the month" for the reason that the logistics in taking such an inventory at each of the 1070 stores would be too difficult and too expensive for Applicant to perform.

12. Applicant's employees are paid on various days of the week, depending upon the particular premises wherein they are employed. Certain employees will not receive their pay



checks for services performed prior to the filing of the Chapter XI petition and, in particular, for wages earned for all or part of the month of September, 1975, until subsequent to the filing of the Chapter XI petition herein. In addition, a total of 564 employees were paid for services rendered by them in September, 1975 by Applicant's checks mailed on September 26, 1975 or by delivery of Applicant's checks to such employees on September 30, 1975. Applicant requests authority to pay such employees their September wages, which total approximately \$1,100,000, in full, even though the September wages of certain of such employees would not ordinarily be entitled to priority pursuant to Section 64a of the Bankruptcy Act, either in whole or in part. If Applicant is to continue to operate its business, it is essential that these employees be paid in full. Failure to do so would have a devastating effect upon employees' morale and lead to disruption of operations, which in turn would have a disastrous impact on Applicant's ability to rehabilitate its business under Chapter XI. Indeed, the financial harm to Applicant's business which would result from the failure of some or all of such employees to receive their wages would far exceed any adverse financial effect that payment in full would have upon Applicant.

13. The continued operation of Applicant's business is dependent upon Applicant's ability to obtain electricity, telephone, telegraph and other services. Such services are an integral part of the Applicant's operations. Without such services and utilities, Applicant will be unable to continue operating Applicant's business. Certain utilities have already threatened to terminate their services unless Applicant makes additional security deposits. Applicant intends to pay on a current basis



all costs and expenses of obtaining such utilities and services during the pendency of these proceedings. Accordingly, no prejudice to such creditors will occur if they continue to furnish and render to Applicant services heretofore rendered. In view of the foregoing, it is in the best interests of this estate and its creditors that all persons, firms and corporations rendering the aforesaid services to Applicant, be stayed and enjoined until final decree or further order of this Court from interfering with, disturbing or cutting off such services and utilities.

14. The inventory, accounts receivable and certain other tangible and intangible personal property of Applicant are subject to security interests held by banks, suppliers and senior debt holders. It is essential to the continuation of Applicant's business that such property and the proceeds thereof be available to and be used by Applicant as debtor-in-possession to generate working capital. To accomplish such purpose and at the same time to protect the holders of such security interests, Applicant proposes that Applicant as debtor-in-possession be given the right to use, collect and realize upon such property and that to the extent that use is made of such property or the proceeds thereof, the claim of any creditor holding a valid security interest thereon shall be deemed a claim against the estate entitled to priority in payment as an expense of administration and secured (subject to other valid liens existing at the time of filing of the petition herein) by substantially all property of the debtor-in-possession and the proceeds thereof. Any creditor claiming to be the holder of a security interest affected by the proposed order would have the right to bring on a hearing with respect to the continued use by the debtor-in-possession of the property claimed to be subject



to such security interests.

15. To further insure that the debtor-in-possession will have sufficient working capital, Applicant proposes to borrow from any banks that have setoff balances the amounts subject to such setoffs. In order to induce such banks to make such loans to the debtor-in-possession, Applicant proposes that such loans be deemed a claim against the estate entitled to priority in payment as an expense of administration and secured pro rata (subject to valid liens existing at the time of filing of the petition herein) by all property of the debtor-in-possession and that such loans be evidenced by certificates of the debtor-in-possession in the form annexed to the proposed order as Exhibit "B". The administration claims against the estate and security interests to be accorded to banks having setoff balances described in this paragraph 15 and to be accorded to the present holder of security interests described in paragraph 14 of this Application shall be on a parity with each other. To further protect the holders of such claims and security interests all cash of the debtor-in-possession will be deposited in a cash collateral account with Morgan Guaranty Trust Company for the benefit of such holders, provided that until an Event of Default (as defined in any certificate issued pursuant to the proposed order) has occurred the debtor-in-possession shall be entitled to the use of the funds in such cash collateral account.

16. As an additional protective device, the Applicant proposes that notice of the provisions of the proposed order with respect to the relief contemplated by paragraphs 14 and 15 of this Application be given to all creditors by enclosing a notice, sub-



stantially in the form annexed to the proposed order as Exhibit "C", with the notice of the first meeting of creditors or by such other method as may be prescribed by the Court.

17. No notice need be given of this application because the discontinuance of the operation of Applicant's business until a hearing can be held will cause serious damage to the goodwill of the business and would render the relief sought herein moot.

18. No receiver has been appointed and no committee of creditors has been designated herein.

19. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, Applicant respectfully prays for the relief requested herein and for such other and further relief as is just.

Dated: New York, New York  
October 2, 1975

W. T. GRANT COMPANY

By 

President

WACHTELL, LIPTON, ROSEN & KATZ and  
LAWRENCE P. KING  
Attorneys for W. T. Grant Company  
299 Park Avenue  
New York, New York 10017  
(212) 371-9200

By 

A Member of the Firm

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re :  
W.T. GRANT COMPANY, :  
Debtor. :  
-----x

In Proceedings for  
an Arrangement  
No. 75 B ' ' 35

FOR COURT USE ONLY

\_\_\_\_\_  
Date Petition Filed

\_\_\_\_\_  
Case Number

\_\_\_\_\_  
Bankruptcy Judge

1. Petitioner's employer's identification number is  
13-0793270.

2. If any of petitioner's securities are registered  
under Section 12 of the Securities and Exchange Act of 1934, SEC  
file number is: 1-3000.

3. The following financial data is the latest avail-  
able information and refers to petitioner's condition on  
September 4, 1975:

a. Total assets: \$1,016,776,243

Exhibit "A"

JA-12



b. Liabilities: \$1,030,556,198

		<u>Approximate Number of Holders</u>
Secured debt, excluding that listed below	\$665,000,000	1,011
Debt securities held by more than 100 holders	\$117,336,000	3,602*
Secured	\$ 23,995,000	1,135*
Unsecured	\$ 93,341,000	2,467
Other liabilities, excluding contingent or unliquidated claims	\$248,220,198	35,000
Number of shares of common stock	13,992,865	35,534

Comments, if any: A reserve of \$1,740,096 for deferred contingent compensation is included under "Other liabilities" above. Petitioner's 4-3/4% sinking fund debentures due January 1, 1987 are held by approximately 1,135\* persons; petitioner's 4% convertible subordinated debentures due June 1, 1990 are held by approximately 127 persons; petitioner's 4-3/4% convertible subordinated debentures due 1996 are held by approximately 2,340 persons; and petitioner's 3-3/4% cumulative preferred stock, par value \$100 per share, is held by approximately 507 persons. All of petitioner's debentures, and petitioner's common stock, are traded on the New York Stock Exchange.

4. Brief description of petitioner's business:

Engaged in the operation and management of retail outlets for the sale of general lines of merchandise.

\* The amount of such holders can only be estimated inasmuch as a substantial portion of such securities are in bearer form.

5. The names of any person who directly or indirectly owns, controls, holds, with power to vote, 25% or more of the outstanding voting securities of petitioner is: NONE.

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are:

W.T. GRANT FINANCIAL CORPORATION  
GRANJEWEL JEWELERS AND DISTRIBUTORS, INC.  
EDISON WHOLESALE JEWELERS & DISTRIBUTORS CO.  
EDISON JEWELERS & DISTRIBUTORS OF OKLAHOMA, INC.  
EDISON JEWELERS & DISTRIBUTORS - AUSTIN  
JONES AND PRESNELL STUDIOS, INC.  
GIS INTERNATIONAL MERCHANDISING CORPORATION  
ZELLER'S LIMITED  
ZELLER'S (WESTERN) LIMITED  
ZELLER'S FINANCIAL CORPORATION LIMITED  
ZELLER'S (FEDERAL STORES) LIMITED  
WALTER P. ZELLER REALTY COMPANY LIMITED  
ZELLER'S DRUG STORES LIMITED  
ZELLER'S DRUG STORES (NOVA SCOTIA) LIMITED  
ZELLER'S DRUG STORES (N.B.) LIMITED  
ZELLER'S DRUG STORES (SASK.) LIMITED  
ZELLER'S DRUG STORES (ALTA.) LIMITED  
ZELLER'S DRUG STORES (B.C.) LIMITED



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re : In Proceedings For  
W. T. GRANT COMPANY, : An Arrangement  
Debtor. : No. 75 B 1755  
-----x

AFFIDAVIT UNDER LOCAL BANKRUPTCY RULE XI-2

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK)

ROBERT H. ANDERSON, being duly sworn, deposes and says:

1. Deponent is President of W. T. Grant Company, the above-named debtor and submits this affidavit in accordance with the requirements of Bankruptcy Rule XI-2 of this Court.

2. The debtor is a business corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 1515 Broadway, New York, New York.

3. The debtor is engaged in the business of operating and managing retail outlets for the sale of general lines of merchandise. The debtor operates a total of 1070 stores -- 533 under the "Grant City" and 537 under the name "Grants." The debtor's stores are located in 40 states, and occupy a gross area of approximately 52,000,000 square feet. During its fiscal year ended January 30, 1975, the debtor had sales of \$1,761,952,000, making it the 6th largest retail business in the United States, exclusive of supermarket chains and the 17th largest retail business overall. The debtor has over 62,000 employees. In addition

Exhibit "D"

to its retail business, the debtor owns 100% of the capital stock of Jones and Presnell Studios, Inc., a photography business, and 100% of the capital stock of GIS International Merchandising Corporation, which imports foreign made goods for domestic sale to the debtor and other retailers and Granjewel Jewelers and Distributors, Inc., a jewelry catalogue showroom business. The debtor also owns 100% of the stock of W. T. Grant Financial Corporation, which operates solely as an aid to the financing of the debtor's operations, and holds a majority interest in Zeller's Limited, a Canada-based retailer.

4. The names and addresses of the ten (10) largest creditors, excluding (a) those creditors who would not be entitled to vote at creditor's meetings under Section 56(b) of the Bankruptcy Act; (b) such creditors as are employed by the debtor at the time of the filing of the petition; (c) or creditors who are stockholders or officers or members of the Board of Directors or Trustees or other similar controlling bodies of the debtor, are as follows:

The Chase Manhattan Bank  
(National Association)  
One Chase Manhattan Plaza  
New York, New York 10005

First National City Bank  
399 Park Avenue  
New York, New York 10022

Morgan Guaranty Trust Company  
of New York  
522 Fifth Avenue at 44th Street  
New York, New York 10036

Manufacturers Hanover Trust  
Company  
1460 Broadway  
New York, New York 10036



Continental Illinois National  
Bank and Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60693

Bank of America National Trust  
and Savings Association  
555 S. Flower Street  
Los Angeles, California 90071

Chemical Bank  
277 Park Avenue  
New York, New York 10017

Bankers Trust Company  
280 Park Avenue  
New York, New York 10017

The Sanwa Bank Ltd.  
One Chase Manhattan Plaza  
New York, New York 10005

Marine Midland Bank - New York  
140 Broadway  
New York, New York 10015

5. There are no actions or proceedings pending or threatened against the debtor or its property, where a judgment against the debtor or seizure of its property may be imminent.

6. No property of the debtor is in the possession or custody of any public officer, receiver, trustee, assignee for the benefit of creditors, mortgagee, pledgee or assignee of rents, except that Morgan Guaranty Trust Company of New York, in its own behalf and as agent for certain other bank creditors of the debtor, is in possession of, as pledgee, (i) certain chattel paper evidencing obligations owing to the debtor, (ii) certificates evidencing 6,399,300 shares of the common stock of Zeller's Limited, and (iii) \$6,060,000 principal amount of the 5-1/2% Convertible Debentures of Zeller's Limited.

7. The debtor is occupying in excess of 1000 separate

premises under lease. Negotiations for modification of all of the debtor's leases have been begun by the debtor. It would be impracticable for the debtor to furnish information as to the length of the terms, the rents reserved, the amounts owing for rent and the said negotiations for modifications of such leases.

8. The debtor desires to continue the operation of its business and the management of its property as debtor-in-possession in accordance with Chapter XI Rule 11-23 and intends to propose an arrangement with its unsecured creditors pursuant to the provisions of Chapter XI of the Bankruptcy Act.

9. The debtor currently employs approximately 62,000 persons. The estimated amount of the weekly payroll to employees (exclusive of officers, stockholders and directors) for a period of 30 days following the filing of the Chapter XI petition is \$6,000,000.

10. The amount now being paid and proposed to be paid for services for a period of 30 days following the filing of the Chapter XI petition to executive officers, stockholders or directors is set forth in Schedule 1 annexed hereto and made a part hereof.

11. The estimated additional operating expenses for the period of 30 days following the filing of the Chapter XI petition are approximately \$122,345,000, inclusive of the cost of goods sold in the amount of \$73,500,000.

12. It is estimated that the debtor's operations for the 30 day period from the date of the filing of its petition for an arrangement will result in a loss of approximately \$10,700,000.



13. It is desirable and in the best interests of the debtor's estate, its creditors and stockholders that the debtor continue the operation of its business and the management of its assets during the pendency of this Chapter XI case. Historically, the debtor's business has operated on a profitable and viable basis. The debtor suffered an operating loss for the first time in its 69 year history for the fiscal year ending January 31, 1975. Additional losses have been experienced in the current year. Such losses were due to a variety of factors, including over-expansion involving the opening or enlargement of approximately 439 stores between the fiscal years ended 1969 and 1974, the entry into leases upon terms and at locations which have proven to be unfavorable, over-expansion of merchandise lines, especially major appliances and furniture, inadequate inventory control and an over-liberal credit policy which resulted in excessive chargeoffs and bad debts. Also contributing to the losses was the general downturn in the economy. The effect of such losses was to discourage many suppliers from extending credit and ultimately to refrain from shipping goods to the debtor upon any terms despite repeated attempts by the debtor and its institutional creditors to induce suppliers to ship goods to the debtor.

14. Traditionally, the forthcoming Christmas season is the best sales period in the retail sales industry and the debtor has historically achieved its best operating results during this period. Debtor believes that the protection afforded it under Chapter XI will enable it to replenish its inventories and take advantage of the seasonal upturn of its business. Debtor anticipates that if it is allowed to continue its operations during this period that sufficient cash flow will be generated to enable the

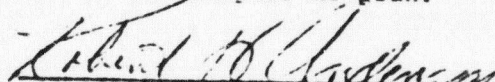
debtor to continue its operations into the new calendar year and to put the debtor into a position to implement successfully the economies in operations and other changes it proposes to make. If the debtor is not permitted to continue its operations as debtor-in-possession, its estate and its creditors will suffer and over 62,000 employees will lose their jobs, with the attendant hardships imposed on their families and communities. In some areas of the nation, the debtor is one of the largest employers. Thus, for example, the debtor is the fifth largest employer in the State of Maine. The consequences of a discontinuance of the debtor's operations on the economy of those areas would be particularly damaging. Moreover, since the debtor is the 6th largest retailer in the nation exclusive of supermarket chains and the 17th largest retailer over-all, such a discontinuance would have grave and severe repercussions in virtually all aspects of the nation's economy.

15. It is deponent's firm belief that given sufficient time under the protection of the Chapter XI court, the debtor will be able to effectuate economies in its operations and propose a plan in the best interests of its creditors. Within the purview of Chapter XI unprofitable operations will be terminated and operations of profitable stores enhanced. A key aspect of such program will be the rejection of a substantial number of the debtor's leases and the attempted modifications of other leases, with a consequent saving in rental obligations, which now total approximately \$115,000,000 per year for all of the debtor's leases. The debtor has already commenced programs to phase out its major appliance business, close appliance service centers, tighten its credit policies and inventory controls, lease certain departments

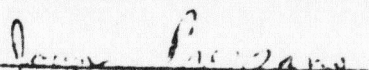


within its stores, lease vacant space within its stores and its New York home office, and eliminate unprofitable product lines -- all of which will substantially reduce the debtor's operating expenses. In order to implement these programs, it is essential that the debtor be able to operate its business and manage its property as debtor-in-possession. Termination of operations for even a limited period of time would destroy the goodwill of the debtor's business and severely prejudice the interests of its estate, its creditors and stockholders, and would cause the loss of over 62,000 jobs.

16. Deponent respectfully submits that in light of all of the foregoing, the continuation of the existing operations of the debtor's business is absolutely necessary to afford the debtor the opportunity to rehabilitate itself for the benefit of its estate, its creditors and its employees. It is deponent's firm belief that given sufficient opportunity, the debtor will be able to propose an arrangement in the best interests of its creditors in accordance with Chapter XI of the Bankruptcy Act. It is for the purpose of rehabilitation of its estate and the protection of its creditors and the preservation of its employees' jobs that the debtor has sought relief pursuant to the debtor relief provisions of Chapter XI of the Bankruptcy Act and seeks authority to continue its business operations as debtor-in-possession until confirmation of its Chapter XI plan.

  
Robert H. Anderson

Subscribed and sworn to  
before me this 3<sup>rd</sup> day  
of October, 1975.

  
Notary Public  
JOHN PREZZANO  
Notary Public, State of New York  
No. 014613/29  
Qualified in Bronx County  
Commission Expires March 30, 1977

<u>Name</u>	<u>Title</u>	Amounts Currently Paid As Compensation on a Monthly Basis and Amounts Proposed to be Paid During the 30 Days Following the Filing of the Petition
James G. Kendrick	Chairman of the Board of Directors and a Director	\$20,833
Robert H. Anderson	President and Chief Operating Officer and a Director	\$18,750
Anthony G. Adams	Assistant Treasurer	\$3,458
William V. Alexander, Jr.	Food Service Vice President	\$4,958
Carl A. Bellini	Southern States Region Vice President	\$4,750
Michael Blasi	Data Processing Vice President	\$4,167
Karl J. Breyer	Assistant Secretary	\$2,233
Robert A. Brown	Personnel Vice President	\$5,000
Robert R. Chaplin	Home Furnishings Merchandise Group Vice President	\$5,254
Joseph W. Chinn, Jr.	Director	*
Thomas A. Connes	Vice President and Controller	\$6,667
John P. Dane	Northeastern Region Vice President	\$5,833
James C. Dunne	Real Estate Vice President	\$3,500
John W. Edgerton	Public Relations Vice President	\$4,167
William B. Edwards	Smallwares Merchandise Group Vice President	\$5,000
John D. Gray	Director	*
Joseph Hinsey	Director	*
Robert J. Greiner	Softwares Merchandise Group Vice President	\$5,000
Robert J. Kelly	Vice President, General Counsel and Secretary	\$3,916

SCHEDULE 1

JA-22



<u>Name</u>	<u>Title</u>	<u>to be Paid During the 30 Days Following the Filing of the Petition</u>
Martin E. King	Store Planning Vice President	\$5,416
E. Robert Kinney	Director	*
Michael Kopenits	Mid-Atlantic Region Vice President	\$5,416
Allan E. Lowen	Assistant Controller	\$2,475
Joseph A. Pardo	Distribution and Inventory Vice President	\$4,167
DeWitt Peterkin, Jr.	Director	*
Charles F. Phillips	Director	++
P. Thomas Picarro	Store Management Vice President	\$6,250
Harry E. Pierson	Vice President - Corporate Properties	\$5,833
Nicholas J. Romagnoli	Assistant Secretary	\$2,386
Richard M. Scarlata	Assistant Controller	\$3,000
Charles J. Seitz	Merchandise Development Vice President	\$5,416
Clarence W. Spangle	Director	*
Clayton R. Stalker	Mid-Western Region Vice President	\$4,917
John E. Sundman	Senior Vice President - Finance and Treasurer and a Director	\$9,583
Arnold Suval	Fashion Merchandise Group Vice President	\$5,333

- \* Outside directors are compensated for their services at the rate of \$1,500 per quarter.  
 + Mr. Phillips receives additional compensation at the rate of \$15,000 per year for serving as Chairman of the Executive Committee, payable in April of each year for the preceding fiscal year.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re : In Proceedings for  
W. T. GRANT COMPANY, : an Arrangement  
Debtor. : No. 75 B 1735  
-----x

ORDER AUTHORIZING DEBTOR-IN-POSSESSION  
TO OPERATE AND MANAGE BUSINESS, TO USE  
COLLATERAL, TO BORROW MONEY AND ISSUE  
CERTIFICATES OF INDEBTEDNESS

Upon the annexed application of W. T. Grant Company, the above-named debtor, dated October 2, 1975, for an order authorizing it, as debtor-in-possession, to operate its business and manage its properties and for other relief, and it appearing that no notice of a hearing thereon need be given and that it is in the best interests of the debtor's estate, and no adverse interest having been represented and sufficient cause appearing therefor, it is

ORDERED that W. T. Grant Company, as debtor-in-possession, be, and it hereby is, authorized to operate its business and manage its properties until further order of the Court; and it is further

ORDERED that without in any way limiting the generality of the foregoing, said debtor-in-possession shall have full power and authority until the further order of this court (a) to employ, discharge and fix the compensation, salaries and wages of all managers, agents, employees and servants, except executive officers, stockholders and directors of the debtor, as it may deem necessary and advisable for the proper operation of the debtor's business and the management, preservation and protection of the



debtor's properties, (b) to pay and satisfy out of any funds now or hereafter coming into its possession all claims for wages, salaries and compensation of all managers, agents, employees and servants, except executive officers, stockholders and directors of the debtor, for services hereafter rendered, (c) to buy and sell merchandise, supplies and other property, as it may deem advisable and necessary in connection with the operation of said business and the management and preservation of said property, and to pay for any such purchases in cash or if made on credit to pay when due, (d) to enter into any contracts incidental to the normal and usual operation of said business and the management and preservation of said property, (e) to keep the properties of the within estate insured in such manner and to such extent as it may deem necessary and advisable, (f) to collect and receive all rents, issues, income and profits, and all outstanding accounts, things in action and credits due or to become due to the within estate, and to hold and retain all moneys thus received to the end that the same may be applied under this or different or further orders of this Court, and (g) to pay and discharge out of any funds now or hereafter coming into its hand, all taxes and similar charges lawfully incurred in the operation of said business and the preservation and maintenance of said properties since the filing of said petition; and it is further

ORDERED that during such operations and management, said debtor-in-possession shall file with this Court a verified monthly report not later than the last Wednesday of each calendar month which shall set forth a summary of the operations of the business during the preceding month and a verified statement of (a) receipts from all sources, classified, and balance on hand



at the beginning and at the end of the month, (b) disbursements for all purposes, classified, and (c) the amount of indebtedness incurred and remaining unpaid and contractual and other obligations assumed; and it is further

ORDERED that said debtor-in-possession be, and it hereby is, authorized to omit the requirements of Bankruptcy Rule XI-5, subdivision 1 requiring, inter alia, weekly statements of cash receipts and disbursements, and subdivision 2(d) thereof, requiring, inter alia, a detailed inventory on hand at the beginning and at the end of each month; and it is further

ORDERED that said debtor-in-possession hereby is authorized to make payments and draw all checks incidental to the conduct of its general and usual business and to open, maintain, and make deposits to and withdrawals from bank accounts as may be necessary or appropriate; and it is further.

ORDERED that said debtor-in-possession shall close the present books of account as of the close of business on the date of the entry of this order, and shall open new books of account as of the opening of business on the next succeeding business day, in which new books of account it shall cause to be kept proper accounts of its earnings, expenses, receipts, disbursements and all obligations incurred and transactions had in the operation of the business and the management, preservation and protection of the properties of the within estate; and said debtor-in-possession shall preserve proper vouchers for all payments made on account of such disbursements; and it is further

ORDERED that, in addition to any other order the court may enter in respect of federal taxes, the debtor-in-possession is



hereby directed and required to segregate and hold separate and apart from all other funds all moneys withheld from employees or collected from others for taxes under any law of any State or subdivision thereof and to deposit the moneys so withheld or collected in a separate bank account not later than the calendar week next after such collecting or withholding, and the debtor-in-possession shall retain such funds in such separate bank account pending further order of this court, except that the debtor-in-possession is hereby authorized to pay from said bank account to the appropriate authorities the appropriate amounts at the times and in the manner prescribed by law; and it is further

ORDERED that the debtor-in-possession, be, and it hereby is, authorized to employ the executive officers and directors listed in Exhibit "A" annexed hereto and pay compensation to them at the rates set forth opposite their respective names, for their services in the operation of the business and management of the property of the debtor; and it is further

ORDERED that the debtor-in-possession, be, and it hereby is authorized and empowered to pay in full wages to its employees earned for services rendered in the month of September, 1975; and it is further

ORDERED that all persons, firms and corporations, be, and they hereby be, enjoined from disturbing or interfering with utility services, including, but not limited to, the furnishing of gas, heat, electricity, water, telephone (present telephone numbers) or any other utility of like kind furnished the debtor and are hereby enjoined from cutting off or discontinuing any such utility or services to the debtor-in-possession except upon further order of this Court; and it is further



ORDERED that the debtor-in-possession be and it hereby is authorized, in the operation of its business and until further order of this Court, (a) to sell inventories, merchandise and other tangible personal property of every kind and description obtained by the debtor prior to the filing of the petition herein and collect and use the proceeds thereof, in whatever form, and (b) to collect and realize upon all accounts, contract rights, chattel paper, instruments, and general intangibles owned by the debtor at the time of the filing of the petition herein and to use the proceeds thereof (including any proceeds constituting collateral for any secured creditor at the time of such filing) in whatever form; that to the extent use is made of such properties or the proceeds, the claim of any creditor holding or entitled to the benefit of a valid security interest therein shall be deemed a claim against the estate entitled to priority in payment as an expense of administration and secured (subject to valid liens existing at the time of filing of the petition herein as to which the lien herein granted has not been substituted) by all property of the debtor-in-possession, including but not limited to, inventories, merchandise, accounts, contract rights, chattel paper, instruments, securities (other than securities of Zeller's Limited), general intangibles, equipment and fixtures and the proceeds thereof of the debtor-in-possession (whether received by it from the debtor or acquired on or after the date of filing the petition herein) ("Security"); that until further order of this Court the debtor-in-possession shall be entitled to sell, collect and use all of such properties in the operation of its business and that any creditor claiming to be the holder or the person entitled to the benefit of any security interest affected by this order may commence a hearing in



this Court, on notice to the debtor-in-possession and such other persons as this Court may designate to determine the continued use of all of such properties by the debtor-in-possession and to make such provisions with respect thereto as the Court may deem to be appropriate; that such claim against the estate and security interest in properties of the debtor-in-possession granted to such creditor shall be on a parity with the claim and security interest granted pursuant to the following paragraph of this order; provided, however, that the foregoing provisions for substitution of collateral shall not affect the right of a bank holding shipping documents or merchandise not yet delivered to the debtor or the debtor-in-possession, securing obligations in connection with letters of credit issued in favor of the suppliers of such merchandise, to require payment upon delivery of such shipping documents or merchandise; and it is further

ORDERED that the debtor-in-possession is authorized to borrow from any banks that have offset balances the amounts so offset; all such borrowings shall be deemed a claim against the estate entitled to priority in payment as an expense of administration and secured, pro rata, by the Security; and evidenced by certificates of indebtedness of the debtor-in-possession substantially in the form of Exhibit "B" attached hereto bearing interest at such rate or rates as may be negotiated between the debtor-in-possession and the holders of such certificates and payable upon such date as shall be provided for in such certificate, subject to acceleration as provided for in such certificate; and it is further

ORDERED that all cash from all sources realized by the

debtor-in-possession shall promptly be deposited in a cash collateral account with Morgan Guaranty Trust Company of New York to be held by Morgan Guaranty Trust Company of New York for the benefit of the persons entitled thereto pursuant to arrangements in existence at the time of filing of the petition herein and to this order as their interests may appear; provided however that until an Event of Default as defined in any certificate issued pursuant to the preceding paragraph occurs, the debtor-in-possession shall be entitled to the use of funds in such cash collateral account upon presentation to Morgan Guaranty Trust Company of New York of written applications therefor. Each such written application shall be deemed to be a certificate of the debtor-in-possession that no such Event of Default has occurred. Morgan Guaranty Trust Company of New York may conclusively rely upon any such written application (unless the personnel to whom such written application shall have been presented shall have actual knowledge of the falsity thereof) and/or final orders of the Court pertaining to such account and shall be under no duty, and have no liability, with respect thereto, except its obligation to pay the funds therein deposited pursuant to such written applications or final Court orders; and it is further

ORDERED that notice of the entry of the three preceding paragraphs of this order shall be given to all creditors by forwarding a notice, substantially in the form of Exhibit "C" hereto to all creditors by enclosing the same with the notice of the first meeting of creditors or such other method as may be prescribed by the Court.

United States of America  
Southern District of New York  
I, JOHN J. GALEY, Bankruptcy Judge of the Southern District of New York, do hereby certify that the within instrument is a true and correct copy of the original as the same appears of record in my office.  
1975  
JOHN J. GALEY  
Bankruptcy Judge  
By *[Signature]*  
Clerk

JA-30

*[Signature]*  
Bankruptcy Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
In the Matter : In Proceedings for  
- of - : an Arrangement  
W. T. GRANT COMPANY, : No. 75B 1735  
Debtor. : ORDER TO SHOW CAUSE  
----- -x

At New York, New York, in the Southern District,  
of New York, on the 24th day of October, 1975.

UPON the annexed petition of BALTIMORE GAS &  
ELECTRIC COMPANY dated October 24, 1975 and on motion of  
LeBoeuf, Lamb, Leiby & MacRae by G.S. Peter Bergen,  
attorneys for BALTIMORE GAS & ELECTRIC COMPANY,

LET W.T. GRANT COMPANY show cause before the  
undersigned Bankruptcy Judge at Foley Square, Manhattan,  
City of New York, on the 29<sup>th</sup> day of October, 1975 at  
10:00 o'clock in the forenoon, Courtroom #237, or as soon  
thereafter as counsel can be heard, why the orders of this  
Court of October 2, 1975 and October 20, 1975, insofar as  
they enjoin BALTIMORE GAS & ELECTRIC COMPANY from dis-  
continuing gas and electric service to D.I.P., should not  
be rescinded, or in the alternative why W.T. GRANT COMPANY  
should not be ordered to pay to BALTIMORE GAS & ELECTRIC  
COMPANY the sum of \$56,017.00 as deposit for continued  
gas and electric service to be supplied to the debtor-  
in-possession, and why BALTIMORE GAS & ELECTRIC COMPANY  
should not have such other and further relief as is just.

LEBOEUF, LAMB, LEIBY & MACRAE  
SENT TO  
MAIL 10/24/75  
RECEIVED  
MAIL  
MAIL  
FILED  
CONFIDENTIAL  
ALL & M. E. 10/24/75

DOCUMENT No. 1

JA-31

SUFFICIENT REASON APPEARING THEREFORE, LET personal service of a copy of the order and petition upon which it is granted upon Wachtell, Lipton, Rosen & Katz, Esqs., attorneys for the debtor-in-possession on or before October 24, 1975 be deemed good and sufficient service.

5 /  
\_\_\_\_\_  
John J. Galgay  
Bankruptcy Judge

Dated: New York, New York  
October 24, 1975

JA-32



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In re	:	In Proceedings for
W. T. GRANT COMPANY,	:	an Arrangement
	:	No. 75B 1735
Debtor.	:	

-----x

TO THE HONORABLE JOHN J. GALGAY  
Bankruptcy Judge

The petition of Baltimore Gas & Electric Company,  
by its attorneys LeBoeuf, Lamb, Leiby & MacRae, respectfully  
shows:

1. Petitioner is a public service company organized  
under the laws of Maryland. Petitioner (hereinafter "BG&E")  
supplies gas and electricity in its franchised service area  
in Maryland, pursuant to its filed tariffs, and under regula-  
tion of the Maryland Public Service Commission pursuant to  
Article 78 of the Maryland Annotated Code.

2. Pursuant to Bankruptcy Rule 915 BG&E hereby  
objects to the jurisdiction of this Court over BG&E in  
personam, and over the subject matter insofar as it relates  
to rendering of gas and electric service by BG&E to W.T.  
Grant Company (hereinafter "D.I.P.") on and after October 2,  
1975.

3. BG&E has, and continues to supply gas and  
electric service to certain stores or other facilities of  
D.I.P. located within BG&E's franchised service area in  
Maryland. The monthly billings in connection with such gas

and electric service have in recent times past been on the order of \$28,000 per month. Bills for such service are rendered after meter-reading, bill processing and delivery of bills to D.I.P., and accordingly a lag of between six to ten weeks can take place between the time service is rendered and the time bills for service are paid, having the effect of BG&E extending credit to D.I.P. on the order of \$55,000 to \$60,000 on a continuing basis.

4. On October 2, 1975 this Court, by order, authorized W.T. Grant and Company to operate and manage its business as a debtor-in-possession, pursuant to Chapter XI of the Bankruptcy Act. The tenth decretal paragraph of said October 2 order provides, inter alia:

"ORDERED that all persons, firms and corporations be and they hereby are, enjoined from disturbing or interfering with utility services, including, but not limited to, the furnishing of gas, electricity, water, telephone (per telephone numbers) or other utility of like kind furnished the debtor and are hereby enjoined from cutting off or discontinuing any such utility services to the debtor-in-possession except upon further order of this Court; . . ."

5. On October 6, 1975 Mr. W.A. Harvey, Supervisor-Credit of BG&E wrote Mr. John E. Sundman, Vice President, D.I.P., to advise that a deposit in the amount of \$56,017.00 would be required in connection with the supply of gas and electric service to D.I.P. stores and facilities within BG&E's service area. A copy of said letter is attached hereto as Exhibit 1. In response, BG&E was provided by D.I.P. with a copy of the aforesaid order of October 2, 1975.



6. On October 20, 1975 BG&E was advised in a telephone call from D.I.P.'s counsel that this Court had, on October 20, signed a supplemental injunctive order prohibiting discontinuance of electric service by BG&E to D.I.P., and a telecopy of said order was forwarded to BG&E by D.I.P.'s counsel on October 21. Said order is attached hereto as Exhibit 2.

7. The injunctive orders of October 2 and October 20 were made without any notice to BG&E, and BG&E has not, up to this point, been afforded any opportunity to be heard with respect thereto.

8. Pursuant to the laws of Maryland and the regulations of the Maryland Public Service Commission, BG&E is obligated to provide gas and electric service within its service area in accordance with its tariffs, and in a non-discriminatory, non-preferential manner. Among other things, the said Maryland Public Service Commission regulates the manner of operation, rates, and service of BG&E.

9. Pursuant to this statutory authority, the Maryland Public Service Commission has promulgated the following regulations:

"402. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service".

"4.2.1. Permission to Require Deposit. Each utility may require from any customer a deposit to be applied against any unpaid balance of the utility for service at the time service shall terminate".

"406. Reasons for Denying Service. Service may be refused or discontinued for any of the reasons listed below . . . :  
(10) For failure of the customer to provide the utility with a deposit and as authorized by Rule 402".

10. The duly filed tariffs of BG&E include §7.6 "Customer's Deposits", which states that BG&E may require a cash deposit of not less than \$5.00 nor more than two months of the estimated bill. Applicable portions of BG&E's tariffs are attached hereto as Exhibit 3.

11. BG&E, under the laws of Maryland, may discontinue service for failure of a customer to provide a deposit.

12. BG&E maintains that this Court's jurisdiction is limited, as provided in §311 of the Bankruptcy Act to ". . . exclusive jurisdiction over the debtor and his property, wherever located" (11 USCA §711). It is settled in this Circuit, moreover, that such limited jurisdiction does not extend to property owned by third parties, such as gas and electricity supplied by a public utility which continues to provide service to a D.I.P. (Slenderella Systems v. Pacific Telephone & Telegraph Company, 286 F.2d 488 (2d Cir. 1961); and see Best Re-Manufacturing Co. v. Pacific Telephone & Telegraph Company, 453 F.2d 848 (9th Cir. 1971)). Accordingly, this Court does not have jurisdiction over gas or electricity as yet unsupplied to D.I.P. by BG&E, and the Court may not therefore require BG&E to continue supply thereof.

13. This is not to say, however, that BG&E may arbitrarily discontinue gas and electric service to D.I.P., because BG&E is required under the laws of Maryland, the regulations of the Maryland Public Service Commission, and its tariffs to provide service to all persons requesting the same, in accordance with the provisions of such laws,



regulations and tariffs. BG&E is accordingly required to provide service to D.I.P. so long as an appropriate deposit is made, but may not supply such service if no deposit is made.

14. Arguments may be made that the status of a D.I.P. under Chapter XI of the Bankruptcy Act entitles him to gas and electric service on terms different than those provided by applicable state statutes, regulations and tariffs. Such arguments, however, cannot stand in light of 28 USCA §959(b) which provides:

"A trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor-in-possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the state in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof". (emphasis added)

The regulations of the Maryland Public Service Commission and tariffs of BG&E duly filed thereunder constitute "valid laws" of Maryland. They must be respected by W.T. Grant as D.I.P., just as before it became D.I.P., with respect to the management and operation of its business. (See Palmer v. Commonwealth of Massachusetts, 308 U.S. 79 (1939)).

15. Moreover, if BG&E were compelled by this Court's ex parte injunctive decrees to continue providing service without a deposit, in effect to continue extending credit on the order of \$55,000 to \$60,000 on a permanent basis, substantial constitutional questions are raised. BG&E maintains that such a circumstance would constitute

a "taking" of its property without due process of law under the Fifth Amendment of the United States Constitution. Such a taking would be manifestly unfair and unjust not only to BG&E, but also to the solvent customers of BG&E service, who would be called upon to make up such losses through subsequent rate proceedings before the Maryland Public Service Commission. In the event this type of taking were to be widely permitted, the solvency and financial stability of utility companies themselves could be affected, particularly in circumstances where substantial numbers of bankruptcies occurred within a particular utility's service area.

16. In weighing the due process and equitable issues involved, BG&E respectfully submits that the Court must give due consideration to the fact that a non-utility supplier of goods or services to a D.I.P. may discontinue its service or supply, or may obtain immediate cash payment. A utility, on the other hand, is forced to use the device of a security deposit by reason of the nature of its billing schedules and practices, and because it is not generally permitted by State law to discontinue service so long as deposits are paid.

17. BG&E recognizes the need for the D.I.P. to conserve its cash resources. But at the same time, BG&E's need for a protective deposit is real and substantial, as is shown by the following additional facts. First, electric meters are read on a monthly basis and further administrative processing is required prior to submission of a customer's bill. (The establishment of more frequent, out-of-cycle meter readings and bill processing procedures would create an additional administrative burden and expense for BG&E.)



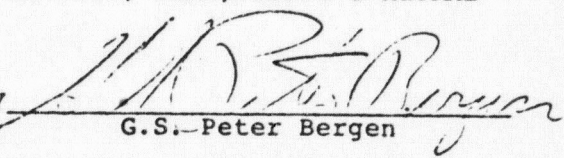
Accordingly, there is approximately a substantial time lag between the initial date utility service is supplied and the earliest possible date of payment. Thus, a utility such as BG&E cannot be fully protected under a simple "pay when due" principle, both because of the time lag in computing payments due and because of the impossibility of recovering the services supplied in the event of non-payment. It is little consolation that BG&E's claim for unpaid utility service would be entitled to priority as an expense of administration, because should D.I.P. fail to survive, there may well be insufficient property free of prior security interests to provide funds for such payment.

WHEREFORE, BG&E demands that this Court's orders of October 2 and October 20, 1975, insofar as they purport to enjoin BG&E from discontinuing electric and gas service to D.I.P. be rescinded or, in the alternative, that they be amended so as to permit BG&E to discontinue such service in the event D.I.P. fails to provide a deposit for service in the amount of \$56,017.00.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

By

  
G.S. Peter Bergen

140 Broadway  
New York, New York 10005  
Telephone: (212) 269-1100

Dated: New York, New York  
October 24, 1975

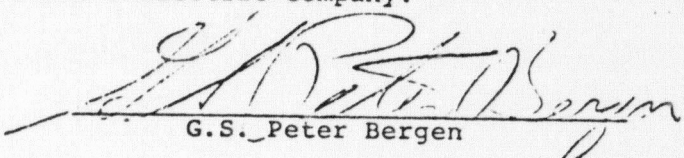
VERIFICATION

STATE OF NEW YORK

SS.:

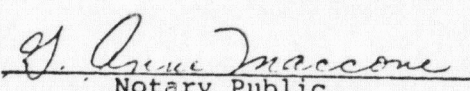
COUNTY OF NEW YORK

I, G.S. PETER BERGEN, counsel for petitioner, Baltimore Gas & Electric Company, do hereby make solemn oath that the statements contained therein are true to the best of my knowledge, information and belief, and that said knowledge, information and belief is based upon correspondence and telephone conversations with responsible officials of Baltimore Gas & Electric Company.

  
G.S. Peter Bergen

Sworn to before me this

24th day of October, 1975

  
Notary Public

G. ANNE MACCONE  
Notary Public  
No. \_\_\_\_\_  
Qualified in \_\_\_\_\_  
Commission Expires March 30, 1977  
G. ANNE MACCONE  
Notary Public, State of New York  
No. 24-2446450  
Qualified in Kings County  
Commission Expires March 30, 1977



## BALTIMORE GAS AND ELECTRIC COMPANY

GAS AND ELECTRIC BUILDING  
BALTIMORE, MARYLAND 21203

October 6, 1975

W. T. Grant Company, Incorporated  
Debtor-in-Possession  
1515 Broadway  
New York, New York - #10036

Attention: Mr. John E. Sundman, Vice President

Dear Mr. Sundman:

Thank you for your recent application for gas and electric service.

In opening your account at the following locations, we find it necessary to ask for a deposit in the amount of \$56,017.00 which must be paid by October 14, 1975, otherwise the service will be turned off. Such action would then require a reconnection charge in addition to the deposit before service would be restored.

1155 Annapolis Rd., Odenton, Md. - #21113	Gas & Elec.	\$ 9,517.00
9200 Balto. Nat'l. Pike, Ellicott City, Md. - #21043	Elec.	\$14,104.00
2 Chartley Drive, Reisterstown, Md. - #21136	Gas & Elec.	\$ 3,132.00
12 Hammonds Lane, Balto., Md. - #21225	Gas & Elec.	\$ 4,115.00
6047 Moravia Park Drive, Balto., Md. - #21206	Gas & Elec.	\$ 7,813.00
6647 Security Blvd., Balto., Md. - #21207	Gas & Elec.	\$ 3,725.00
N/3 McKinsey Rd., 2 E. Ritchie Highway Severna Park, Md. - #21146	Elec.	\$13,461.00

Deposits, when held longer than 90 days, earn simple interest at the rate of 6% per annum for the entire period held.

For your convenience, you may mail your payment with the enclosed bills in the accompanying envelope.

Yours very truly,

(Signed) W. A. HARVEY

W. A. Harvey  
Supervisor-Credit  
Credit and Collections

WAH:kb

Enclosures

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re  
W. T. GRANT COMPANY,  
Debtor.

In Proceedings for  
an Arrangement  
No. 75 B 1735

SUPPLEMENTAL ORDER ENJOINING BALTIMORE  
GAS AND ELECTRIC COMPANY FROM DISCON-  
TINUING SERVICE TO DEBTOR-IN-POSSESSION

OCT 22 1975

JOHN J. GALGAY  
Bankruptcy Judge

Upon the application of W. T. Grant Company, as debtor, dated October 2, 1975, annexed to the order (the "DIP Order") authorizing W. T. Grant Company, as debtor-in-possession, inter alia, to operate and manage its business, to use collateral, to borrow money and to issue certificates of indebtedness, and upon the representation of counsel for said debtor-in-possession that said counsel has been notified by counsel for Baltimore Gas and Electric Company that Baltimore Gas and Electric Company has decided to discontinue utilities service to said debtor-in-possession, and it appearing that no notice of the entry of this order need be given, and sufficient cause appearing therefor, it is

ORDERED, that the tenth decretal paragraph of the DIP Order be, and it hereby is, confirmed and made specifically applicable to enjoin Baltimore Gas and Electric Company and all persons in active concert and participation with them from disturbing or interfering with utility services furnished W. T. Grant Company, as debtor-in-possession, and from cutting off or



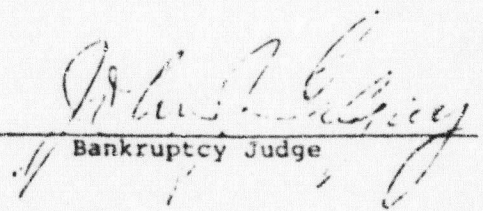
(Based on an hour's review of current uncollectables). Write-offs of  
discontinuing any such utility or services to said debtor-in-possession, except upon further order of this court; and it is further

ORDERED, that willful violation of this order or the DIP Order by Baltimore Gas and Electric Company or any persons in active concert or participation with them will furnish the basis for a contempt proceeding against Baltimore Gas and Electric Company; and it is further

ORDERED, that if Baltimore Gas and Electric Company willfully violates this order or the DIP Order, it will be held liable to W. T. Grant Company, as debtor-in-possession, for all consequential and incidental damages suffered by said debtor-in-possession as a result of such violation; and it is further

ORDERED, that if Baltimore Gas and Electric Company willfully violates this order or the DIP Order, it will be held liable to W. T. Grant Company, as debtor-in-possession, for such punitive and exemplary damages as this court may deem appropriate.

Dated: New York, New York  
October 27<sup>th</sup> 1975.

  
\_\_\_\_\_  
Bankruptcy Judge

## 7. PAYMENT TERMS

**7.1 Obligation:** The Customer is responsible for all charges for electricity furnished and for all charges under the agreement until the end of the term thereof.

**7.2 Billing Period:** Rates are stated on a monthly basis and bills are rendered monthly following the supply of service based on meter readings to the nearest kilowatthour (kwh), scheduled at approximate monthly intervals of from 28 to 31 days. Where readings at other than scheduled dates are required, the "monthly" billing period may cover 16 to 45 days.

An initial period of less than 16 days is included in the next month's billing. A final period of from 1 to 45 days is billed as 1 month.

For periods over 45 days, the Minimum Charge and the kwh chargeable at the various rate blocks are multiplied by the number of elapsed billing months covered by the bill, a period of 16 days and over being counted as an elapsed billing month.

Where the service is supplied under Schedule G with a Billing Demand in excess of 60 kw, or under Schedule T, and the bill is for a period other than the monthly billing period, the "monthly" provisions of the schedule are applied pro rata on the basis of the number of days covered by the bill divided by 30.

**7.3 Billing Plan:** The rate schedules in this Tariff state net prices. Late payment charges are as stated, but are not applicable to County, State, and Federal Governments, and incorporated cities and towns.

**7.4 Net-Payment Period:** Bills are due and payable upon presentation. The final date for payment of the net amount is shown on the bill, and is at least 15 days from the date of rendition. Failure to receive the bill does not excuse Customers from payment obligations and payments shall be paid without regard to any counterclaim whatever.

**7.5 Payments After Due Date:** Where the payment terms are specified as Standard in a rate schedule, the Late Payment Charge, where applicable, is added to the bill and the total amount becomes due on the expiration of the net-payment period. The collection of the Late Payment Charge on an overdue bill is waived upon request providing not more than one other such waiver has been made on bills in the preceding 11 months.

**7.6 Customers' Deposits:** The Company may require from any Customer or prospective Customer a cash deposit, determined in accordance with the applicable regulations of the Commission and the applicable rules or practices of the Company, intended to guarantee payment of final bills. Such deposit shall be not less than \$5 nor more in amount than two-twelfths of the estimated charge for the ensuing 12 months for residential service, nor more than the maximum estimated charge for two consecutive billing periods for nonresidential service or as may be reasonably required by the Company in cases involving service for short periods or special occasions. Simple interest on deposits at the rate of 6% per annum is paid by the Company to each Customer making such deposit for the time the deposit is required by the Company, provided, that no interest is paid unless the deposit is held longer than 90 days. Payment of the interest to the Customer is made annually if requested by the Customer, or at the time the deposit is refunded.



**2.3 Curtailment of Supply:** The supply of service is subject to any orders of Federal or State authorities establishing any priority of or limitations to service.

**2.4 Refusal or Discontinuance of Supply for Cause:** The Company may refuse or discontinue service and remove its property without being liable to the Customer, or to tenants or occupants of the premises served, for any loss, cost, damage or expense occasioned by such refusal, discontinuance or removal, for any of the following reasons:

- (a) Customer's failure to comply with any of the provisions of the contract, or any applicable regulations of the Commission, or any of the Company's applicable rules or practices currently in effect.
- (b) Customer's nonpayment of bill within the net-payment period, and then after reasonable attempt to effect collection of the bill plus the applicable Late Payment Charge, including written notice of at least 3 days exclusive of Sundays and holidays.
- (c) Customer's failure to provide a deposit to insure payment of bills, when requested by the Company under the provisions of Sec. 7.6.
- (d) Customer's failure to pay any of the regular monthly installments under payment plans for extensions. (The unpaid deferred charges shall thereupon become due and payable.)
- (e) Customer's failure to maintain his equipment in safe condition, in the judgment of the Company.
- (f) Withdrawal or termination of the proper permits, certificates or rights-of-way.
- (g) Exceeding of the limits of current supply specified without the required notice of same.
- (h) Change in the current supply or service location to which the equipment on the premises is not adapted.
- (i) Notice of the rightful authorities to remove overhead wires or poles.
- (j) Removal of the Customer.
- (k) Evidence of fraud.
- (l) Unauthorized adjustment of or tampering with Company's equipment.
- (m) Customer's use of his equipment in a manner judged by the Company to adversely affect its equipment or its service to others.

The Company may discontinue service without notice for reasons (e), (g), (k), (l) and (m) above.

**2.41 Reconnection Charge:** Where the Company has discontinued service for nonpayment of bill or for other reasons listed in Sec. 2.4, the Customer is subject to the following charge, payable at a Company business office, as a condition of resuming service at the same location or at a different location:

- (a) Where the disconnection was made at the meter location without the necessity of legal action—
  - \$3.00 where the reconnection can be made under routine scheduled working conditions, or
  - \$4.25 where the Customer requires reconnection on the same day on which, before 3 pm, cause for discontinuance is removed, except on Saturday and on the day before a Company holiday,
- (b) where the Company was unable to obtain access to the meter and the disconnection was made at other than the meter location or at the meter location as a result of legal action, \$10.00 without regard to the conditions of reconnection but, other than on Saturday and the day before a Company holiday, cause for discontinuance must be removed before 3 pm to have service reconnected on the same day.

**2.5 Loss or Damage From Failure To Supply:** The Company is not liable for any loss, cost, damage or expense to any Customer occasioned by any failure to supply electricity according to the terms of the contract or by any interruption or reversal of the supply of electricity, if such failure, interruption, or reversal is due to storm, lightning, fire, flood, drought, strike or any cause beyond the control of the Company, or any cause except wilful default or neglect on its part.



**7.5 Payments After Due Date:** Where the payment terms are specified as Standard in a rate schedule, the Late Payment Charge, where applicable, is added to the bill and the total amount becomes due on the expiration of the net-payment period. The collection of the Late Payment Charge on an overdue bill is waived upon request provided not more than one other such waiver has been made on bills in the preceding 11 months.

**7.6 Customers' Deposits:** The Company may require from any Customer or prospective Customer a cash deposit, determined in accordance with the applicable regulations of the Commission and the applicable rules or practices of the Company, intended to guarantee payment of final bills. Such deposit shall be not less than \$5 nor more in amount than two-twelfths of the estimated charge for the ensuing 12 months for residential service, nor more than the maximum estimated charge for two consecutive billing periods for nonresidential service or as may be reasonably required by the Company in cases involving service for short periods or special occasions. Simple interest on deposits at the rate of 6% per annum is paid by the Company to each Customer making such deposit for the time the deposit is required by the Company, provided, that no interest is paid unless the deposit is held longer than 90 days. Payment of the interest to the Customer is made annually if requested by the Customer, or at the time the deposit is refunded.

## 8. EXTENSIONS

### 8.1 General

**8.11 General Statement Regarding Extensions:** The Company extends its gas lines in accordance with general practice described in these rules.

**8.12 Procedure To Initiate an Extension:** Extensions are made when an application has been signed for service from a proposed extension for which rights-of-way, permits and conditions required by the Company's rules and practices have been obtained, upon payment of charges for the extension by the Customer or upon approval of the Customer's credit, if deferred payments are involved.

**8.121 Permissions and Rights-of-way:** Application for service constitutes permission to install Main or Service extensions, or portions thereof, (defined in Secs. 8.21 and 8.22, respectively) which are located on the owner's property solely for his or his tenant's use. Suitable rights-of-way are required for all other extensions, including the right to extend main along and adjacent to thoroughfares and lot lines to adjacent properties. Any subsequent relocation of all or part of such extensions made at the request of any owner or tenant or required, in the opinion of the Company, by any change in structure or other activity of such owner or tenant, shall require payment by him of the Company's charges for such relocation.

**8.13 Layouts for Extensions:** The Company provides the layouts for all extensions. The Customer shall furnish the Company approved copies of the property plats, grading plans, utility plans and other such plans with respect to his property as deemed necessary by the Company.

**8.14 Grading of Property:** The Customer shall be responsible for the preliminary grading of his property to within 3 inches of final grade before the Company commences construction of its extension to meet the Customer's service requirements. In addition, no extensions are made until the installation of the Customer's water and sewage utilities is completed.

**8.15 Ownership and Maintenance of Mains and Services:** Mains and Services are owned and maintained by the Company.

**8.2 Classification of Extensions:** Extensions for the supply of gas are designated under two classifications, as main and service.

**8.21 Main—Definition and Conditions of Installations:** "Main" constitutes (a) that part of a line which is located along a street or road which is a public highway used as a thoroughfare by the general public, and (b) that part of a line located along a private road or across private property and used for the supply in common of at least two buildings. Mains are installed by the Company upon payment by the Customers served of the respective charges stated below, which are subject to the provisions hereunder relating to reductions by allowances.



**2.2 Supply Points:** It is the standard practice of the Company to provide (subject to the provisions of Sec. 8 Extensions):

(a) One service

1. for all the requirements of the Customer on a single property; where the supply is for his use in a group of buildings, the supply point is located, wherever practicable, at a location central to the group;
2. for each building on the Customer's property, upon request, provided the service to any building is in each instance for the major requirements of that building;
3. for any building occupied by two or more Customers;

(b) One meter (or metering unit)—for each Customer at each supply point; where two or more Customers are supplied from one service, a centralized meter location is required wherever practicable. Each meter shall have a separate application of the schedule.

Where, to obviate undue distribution expenditure by him, more than one service is required by the Customer for a building or pair of adjoining buildings, the Company provides such additional service in accordance with the provisions of Sec. 8.6. Each meter shall have a separate application of the schedule.

A group of buildings with interconnected passageways is considered as one building.

Where, under unusual conditions, more than one service (supply point) is necessary to supply the Customer's requirements for large connected loads on property comprising single or contiguous land parcels, the Company provides such service upon request under standard extension provisions. Whenever the Customer requests and the Company in its judgment finds it practicable to provide more than one service on his property, the service use is metered at each supply point. The registrations of these meters are combined and the Customer is billed for the total use, computed as if all service had been furnished through one service on a single application of Schedule C, provided one of the supply points requires metering capacity of not less than 15,000 cu. ft. per hour and each additional supply point requires metering capacity of not less than 5,000 cu. ft. per hour. In determining contiguity hereunder of parcels abutting opposite sides of public or private roads or other ways, the boundaries of such parcels shall be considered as extending to the center of such roads or ways.

**2.3 Curtailment of Supply:** The supply of service is subject to any orders of Federal or State authorities establishing any priority of or limitations to service.

**2.4 Refusal or Discontinuance of Supply for Cause:** The Company may refuse or discontinue service and remove its property without being liable to the Customer, or to tenants or occupants of the premises served, for any loss, cost, damage or expense occasioned by such refusal, discontinuance or removal, for any of the following reasons:

- (a) Customer's failure to comply with any of the provisions of the contract, or any applicable regulations of the Commission, or any of the Company's applicable rules or practices currently in effect.
- (b) Customer's nonpayment of bill within the net-payment period, and then after reasonable attempt to effect collection of the bill plus the applicable Late Payment Charge, including written notice of at least 3 days exclusive of Sundays and holidays.
- (c) Customer's failure to provide a deposit to insure payment of bills, when requested by the Company under the provisions of Sec. 7.6.
- (d) Customer's failure to pay any of the regular monthly installments under payment plans for extensions. (The unpaid deferred charges shall thereupon become due and payable.)
- (e) Customer's failure to maintain his equipment in safe condition, in the judgment of the Company.
- (f) Withdrawal or termination of the proper permits, certificates or rights-of-way.
- (g) Removal of the Customer.
- (h) Evidence of fraud.
- (i) Unauthorized adjustment of or tampering with Company's equipment.

The Company may discontinue service without notice for reasons (e), (h) and (i) above.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

In re	:	In Proceedings for
	:	an Arrangement
	:	
W. T. GRANT COMPANY,	:	No. 75 B 1735
	:	
	:	AFFIDAVIT IN OPPOSITION
	:	TO MOTION OF BALTIMORE
Debtor.	:	GAS & ELECTRIC COMPANY
	:	TO COMPEL SECURITY
	:	DEPOSIT

----- x

STATE OF NEW YORK )  
                          : ss.:  
COUNTY OF NEW YORK )

ROBERT J. KELLY, being duly sworn, deposes and says that he is Vice President and General Counsel of W. T. Grant Company ("Grant"), the above-named debtor, and is fully familiar with the facts set forth herein.

1. This affidavit is submitted in opposition to the motion of Baltimore Gas & Electric Company ("BG&E"), brought on by order to show cause dated October 24, 1975, for an order requiring Grant, inter alia, to pay to BG&E the sum of \$56,017 as a security deposit for gas and electric service to be supplied by BG&E to Grant as debtor-in-possession and vacating the order of this Court dated October 2, 1975 which restrains BG&E from discontinuing gas and electric service to Grant, as debtor-in-possession. As will be demonstrated below, BG&E's motion must be denied, since BG&E has made no showing that such a deposit is necessary, the statutes and tariffs thereunder authorizing the demand for such a deposit of Grant as a debtor-in-possession are unconstitutional and if Grant were required

DOCUMENT No. 2

JA-48



to make such a deposit with BG&E and the other public utilities serving Grant, the resulting drain on Grant's cash resources would seriously endanger the success of these arrangement proceedings.

2. BG&E's moving papers do not set forth any facts to establish that the requested deposit is necessary to protect BG&E against non-payment. Thus, no showing is made that Grant does not intend to make payment when due for the services to be rendered by BG&E to Grant while Grant is a debtor-in-possession in these proceedings or that Grant's resources are inadequate to pay all of BG&E's bills for such services as they become due. Indeed, BG&E's petition does not even allege that any arrearages exist for the period prior to the filing of the Chapter XI petition herein and your deponent has no reason to believe that any such arrearages exist. Instead, BG&E's moving papers merely state that by virtue of its own billing practices, BG&E in effect extends credit to Grant and that under state law and its governing tariffs a utility company has the right to require a deposit and to discontinue service if such a deposit is not made. As shown in the Memorandum of Law submitted herewith, such provisions of state law and BG&E's tariffs do not give BG&E the right to require such a deposit from Grant in these proceedings. Moreover, under the leading decision of the United States Supreme Court, the statutes and tariffs which authorize BG&E's demand for a deposit of Grant as a debtor-in-possession are unconstitutional as violative of the Supremacy Clause.

3. Not only has BG&E failed to make any showing that a deposit is necessary to protect BG&E against non-payment, but Grant submits that BG&E is already adequately protected. Thus, the order of this Court dated October 2, 1975 authorizing Grant to operate and manage its business as a debtor-in-possession (pp. 1-2) specifically authorizes Grant to "buy and sell merchandise, supplies and other property, as it may deem advisable and necessary in connection with the operation of said business and the management and preservation of said property, and to pay for any such purchases in cash or if made on credit to pay when due \* \* \* ." (Emphasis supplied.) As was set forth in the application for such order (§ 13), "[Grant] intends to pay on a current basis all costs and expenses of obtaining \* \* \* utilities and services during the pendency of these proceedings. Accordingly, no prejudice to such creditors will occur if they continue to furnish and render to [Grant] services heretofore rendered." And, Grant is willing to have this Court enter an order directing Grant to make payment for all gas and electric bills on a current basis as rendered. Moreover, in the event Grant fails to make any payments for any services rendered by BG&E to Grant while it is a debtor-in-possession, BG&E's claim for the amounts due for such services will be adequately secured, despite BG&E's protestations to the contrary, since such claims will be entitled to priority as an expense of administration as against any unsecured pre-petition debts of Grant.



4. Quite apart from the fact that a deposit is unnecessary to protect BG&E against non-payment, is the indisputable fact that if Grant were required to make the massive \$56,017 deposit demanded by BG&E, it would also be compelled to make similar deposits with the many other public utilities providing it with service. Indeed, in addition to BG&E, a number of these other utility companies have already demanded deposits notwithstanding the existing stay against discontinuance of service. The drain on the cash resources of Grant which such deposits would entail would severely endanger the chances for a successful arrangement herein. Thus, Grant as the sixth largest retail business in the nation, exclusive of supermarket chains, currently operates a total of 1070 stores in 40 states. Grant has dealings with hundreds of utility companies. Prior to the filing of the petition herein, its utility bills averaged approximately \$3,000,000 per month, of which, according to BG&E's moving papers, BG&E's bills averaged \$28,000, or less than 1%. It can readily be seen that if Grant were forced to post deposits with any sizeable number of such companies as a condition to receiving continued service, Grant would be required to part with the use of many millions of dollars.

5. In order for these arrangement proceedings to be successful it is absolutely essential that Grant be in a position to obtain and pay for an adequate supply of merchandise from its trade suppliers. This need is especially critical during the coming Christmas and Easter seasons. If Grant were required to post many millions of dollars security deposits with

utility companies, its ability to obtain and pay for an adequate supply of merchandise and, in turn, its chances for successful rehabilitation in these proceedings would be seriously impaired.

6. In sum, as shown in the accompanying Memorandum of Law, BG&E has no right in these arrangement proceedings to require the requested deposit and the statutes and tariffs authorizing its demand for such deposit as a condition to continued service to Grant as debtor-in-possession are unconstitutional. As further shown therein, BG&E's objections to the jurisdiction of this Court to make orders with respect to the service supplied by BG&E to Grant as debtor-in-possession are totally without merit. Since Grant's need to preserve its cash resources far outweighs BG&E's non-existent need for a deposit to secure itself against the chances of non-payment by Grant for the services to be rendered by BG&E to Grant as debtor-in-possession, BG&E's motion to compel Grant to post a security deposit and to vacate the restraining order herein must be denied.

7. In the event, however, that this Court sees fit to require Grant to post a deposit with BG&E, it is submitted that the sum of \$56,017 demanded by BG&E is grossly excessive and can only be explained as being the maximum amount (two months' estimated bills) which BG&E's tariffs allow it to demand. See BG&E Petition, ¶ 10. BG&E has made no showing that it extends two months' credit even under its present billing practices. Moreover, no reason is suggested by BG&E why it could not render bills on a more prompt basis, other



than the vague conclusion that such procedure would create an unspecified "additional administrative burden and expense for BG&E" (see BG&E Petition, ¶ 17). It is submitted that the hardship which would result to Grant were it to be required to post a two months' (\$56,017) deposit far outweighs any such additional "administrative burden and expenses" to BG&E.

WHEREFORE, deponent respectfully requests that BG&E's motion to require Grant to post a deposit of \$56,017 be denied, that no deposit in any amount be required of Grant and that Grant have such further and different relief as the Court may deem just.

/s/ Robert J. Kelly  
Robert J. Kelly

Sworn to before me this  
28<sup>th</sup> day of October, 1975.

(Seal)

/s/ Edward J. White, III  
Notary Public, State of N.Y.  
No. 31-4526127  
Qualified in New York County  
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

In re  
W. T. GRANT COMPANY,

Debtor.

In Proceedings for  
an Arrangement

No. 75 B 1735

AFFIDAVIT IN SUPPORT OF  
MOTION OF BALTIMORE GAS AND  
ELECTRIC COMPANY TO COMPEL  
SECURITY DEPOSIT

----- x

STATE OF MARYLAND:

: SS:

CITY OF BALTIMORE:

W. A. HARVEY, being duly sworn, deposes and says that he is Supervisor of Credit of Baltimore Gas and Electric Company ("BG&E"), one of the public utilities supplying gas and electric service to W. T. Grant Company ("Grant"), the above-named debtor, and that he is fully familiar with the facts set forth herein.

1. This Affidavit is submitted in support of the Petition filed by Baltimore Gas and Electric Company requesting that the Orders of this Court of October 2 and October 20, insofar as the same purport to enjoin BG&E from discontinuing gas and electric service to W. T. Grant Company be rescinded or, in the alternative, that they be amended so as to permit BG&E to discontinue such service in the event that Grant fails to provide a security deposit, insuring payment for such service, in the amount of \$56,017.00.

2. BG&E, consistent with the general practice in the utility industry, bills its customers for gas and electric service after the same has been consumed--as opposed to billing in advance, prior to consumption. BG&E's normal billing-and-follow-up practices are as follows:

Each meter location represents a separate account, and any particular customer may have a number of different accounts with BG&E, depending on the number of properties owned or leased by the customer.

Meters are read 12 times a year at intervals of approximately 30 to 31 days.

SERVED

FILED

RECEIVED

FILED

FILED

FILED

FILED

FILED

FILED

The normal meter-reading date for each meter depends on its geographic

DOCUMENT No. #6

JA-54



location. Raw data for all of the meters read on any particular day is collected and processed, and every customer whose meter was read on that day normally receives his bill on the 7th day, via first class mail, following the meter reading date. Bills are due on presentation; but the rules of the Public Service Commission and BG&E's Tariff require that each customer be afforded a 15-day period after rendition of the bill to make payment without incurring any penalty or late charge. BG&E's record keeping system, in its computerized mode, is not sufficiently sophisticated to provide an automatic report each day on the current status of any particular account or accounts with regard to the payment or non-payment of outstanding charges. Accordingly, non-payment by a customer of the preceding month's bill is normally not discovered and acted upon until the billing for the current month is in the process of preparation. After discovery of non-payment, PSC rules and the Tariff require that the customer be afforded a minimum of 3 days' written final notice before BG&E denies further service by cutting the customer off. In most instances BG&E attempts to effectuate collection through a series of reminders, notices and customer contacts before service is denied, and the final notice is allowed to stand for 7 days rather than 3. The number of days of unpaid service at the time of disconnection ranges between 67 and 112 in most cases, the average unpaid service being approximately 89 days.

3. Assuming that the Grant accounts were to be taken out of the automated billing-and-follow-up computer program and were to be transferred to the manual routine intended to accommodate special, trouble situations, and assuming that a denial service could be effectuated upon non-payment without application to this Court, there would, in all probability, be an absolute minimum of 48 days of unpaid service at the time that a disconnection for non-payment was made. This 48 days of unpaid service would have been accumulated as follows:

- |   |         |
|---|---------|
| (a) Service consumed prior to meter reading -         | 30 days |
| (b) Service consumed during preparation of the bill - | 3 days  |



(c) Service consumed while bill is in transit via first class mail -	1 day
(d) Service consumed while customer is presumed to be processing bill for payment -	7 days
(e) Service consumed while payment is presumed to be in transit via first class mail -	1 day
(f) Service consumed before non-payment is discovered, verified and a final notice prepared [the average time required is 4 days] -	1 day
(g) Service consumed while final notice is in transit via first class mail -	1 day
(h) Service consumed while final notice is running -	3 days
(i) Service consumed between expiration of final notice and disconnection -	<u>1 day</u>
Total Unpaid Service	48 days

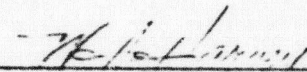
The foregoing is premised on the assumption that BG&E's manual routine is functioning at maximum design efficiency, that weekends and holidays do not intervene at inappropriate times, and that no unforeseen circumstances arise to occasion further delay. Experience would tend to indicate that about 4 to 8 additional days of unpaid service should be added to the minimum 48 days postulated--making a more realistic average total of 54 days of unpaid service--on the basis of intervening holidays and weekends and other unexpected contingencies.

4. Although a number of debtors-in-possession or trustees have voluntarily paid a deposit equivalent to two months' estimated bills, such deposits have proved insufficient in a number of instances to cover the difference between the amount actually paid by the debtor or trustee for service supplied after the institution of court proceedings and the actual charge for such service. BG&E has not made any systematic effort to keep a separate record of these occurrences. According to a note supplied to the Referee in Bankruptcy for the District of Maryland in 1969 (apparently based on a very hasty and incomplete review one afternoon of certain then-current uncollectables), such insufficiency did occur in the IMCO Manufacturing and

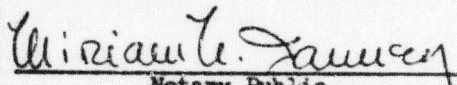


Sales Corporation and Blaunco, Inc. D.I.P. matters. More recently, in 1975 (based on an hour's review of current uncollectables), write-offs of \$2,253.11 and \$6,227.64, respectively, were found in connection with the Togs Inc. and Albert Goetz, Inc. D.I.P. cases, notwithstanding respective deposits of \$1,620.00 and \$21,053.00.

WHEREFORE, Deponent respectfully submits that a deposit by W. T. Grant Company of any less than \$56,017.00, the estimated charge for two months' service, would be unreasonable and inadequate to afford to Baltimore Gas and Electric Company (and to its other ratepaying customers) the degree of assurance to which it is equitably entitled against further default and loss occasioned by the ongoing actions of W. T. Grant.

  
W. A. Haryey

Sworn to before me this  
31st day of October, 1975.

  
Notary Public

My Commission expires 7/1/78.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

In the Matter  
of

W. T. GRANT,

Debtor.

No. 75 B 1735

U. S. Courthouse,  
Foley Square,  
New York, New York.

October 29, 1975.

Adj XI-4  
Adj S/C - TLC Oil Company  
Adj S/C - Hattie Carnegie Jewelry  
Adj S/C - Simplicity Pattern  
Adj S/C - I. I. Lighting  
OSC - Baltimore Gas & Elec  
OSC - Garan Inc.

B E F O R E :

HON. JOHN J. GALGAY,

Bankruptcy Judge

XI-4, Adjourned to November 12, 1975, at 10:00 A. M.  
Adj S/C, Adjourned to November 13, 1975, at 10:00 A.M.

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

CORLAND 7-3877  
3878

JA-58



## A P P E A R A N C E S :

WACHTELL, LIPTON, ROSEN & KATZ, ESQS.,  
Attorneys for Debtor,  
299 Park Avenue,  
New York, New York.

BY: LEONARD ROSEN, ESQ.,  
-and-  
THEODORE GEWERTZ, ESQ.,  
of Counsel.

BLUMBERG, SINGER, ROSS, GOTTESMAN & GORDON, ESQS.,  
Attorneys for Creditors,  
245 Park Avenue,  
New York, New York.

BY: ALFRED K. KESTENBAUM, ESQ.,  
of Counsel.

DE BEVOISE, PLIMPTON, LYONS & GATES, ESQS.,  
Attorneys for Creditors,  
299 Park Avenue,  
New York, New York.

BY: STEPHEN J. FRIEDMAN, ESQ.,  
-and-  
WILLIAM A. NEWMAN, ESQ.,  
of Counsel.

BALLON, STOLL & ITZLER, ESQS.,  
Co-counsel for Creditors Committee,  
1180 Sixth Avenue,  
New York, New York.

BY: RONALD ITZLER, ESQ.,  
of Counsel.

DAVIS, POLK & WARDELL, ESQS.,  
Attorney for Creditor,  
One Chase Manhattan Plaza,  
New York, New York.

BY: PHILIP C. POTTER, JR., ESQ.,  
of Counsel.

A P P E A R A N C E S :  
(CONTINUED)

BADER & BADER, ESQS.,  
Attorneys for Debenture Holders,  
270 Madison Avenue,  
New York, New York.

BY: I. WALTON BADER, ESQ.,  
of Counsel.

WEIL, GOTSHAL & MANGES, ESQS.,  
Attorneys for Creditors,  
767 Fifth Avenue,  
New York, New York.

BY: ALAN MILLER, ESQ.,  
of Counsel.

JOHN W. SINON, ESQ.,  
Attorney for LILCO,  
One Old Country Road,  
Carle Place, New York.

WHITMAN & RANSOM, ESQS.,  
Attorneys for Creditor,  
522 Fifth Avenue,  
New York, New York.

BY: WILLIAM M. KAHN, ESQ.,  
of Counsel.

LE BOEUF, LAMB, LEIBY & MacRAE, ESQS.,  
Attorneys for Baltimore Gas & Electric,  
140 Broadway,  
New York, New York.

BY: G. S. PETER BERGEN, ESQ.,  
of Counsel.

SIDNEY C. MILLER, JR., ESQ.,  
Attorney for Baltimore Gas & Electric,  
1700 Gas & Electric Bldg.,  
Baltimore, Maryland.



1  
2  
3       A P P E A R A N C E S :  
4       ( C O N T I N U E D )

5       GEORGE E. ASHLEY, ESQ.,  
6       Attorney for New York Telephone,  
7       1095 Avenue of Americas,  
8       New York, New York.

9       BY:       PATRICK E. WALSH, ESQ.,  
10       of Counsel.

11       GUGGENHEIMER & UNTERMYER, ESQs.,  
12       Attorneys for Simplicity,  
13       80 Pine Street,  
14       New York, New York.

15       BY:       STEVEN D. DREYER, ESQ.,  
16       of Counsel.

17       - - -

18       P R O C E E D I N G S

19       THE JUDGE:   The first matter on  
20       the calendar is the adjourned XI-4 meeting.

21       MR. ROSEN:   Your Honor, I would  
22       like to briefly report on what has happened  
23       since the last XI-4 hearing on behalf of  
24       Grant.

25       The company has continued its opera-  
      tions, it has commenced the closing of 301  
      stores as has received some publicity, in-  
      cluding all of the stores on the west coast  
      and I guess all stores west of the Mississippi,  
      probably.

1  
2  
3  
4 In terms of its present cash posi-  
5 tion, it has incurred the following pay-  
6 ments thus far. I reported on this at the  
7 last hearing. I can bring it up through  
8 October 27th.

9 It has disbursed \$53 million ap-  
10 proximately for merchandise, \$31 million  
11 for expenses, making a total of approximate-  
12 ly \$85 million disbursed.

13 It now has a cash balance of about  
14 \$84 million and it has another \$98 million  
15 in cash balances which are at the bank  
16 subject to withdrawal by the company, of  
17 which approximately \$50 million are col-  
18 lectible and immediately available.

19 The balance being in the so-called  
20 pipe line en route from local banks all  
21 over the country where the funds are actu-  
22 ally deposited to New York.

23 The company has immediately avail-  
24 able approximately \$60 million and another  
25 40 to 50 in the pipe line, en route from  
local banks to Morgan Guaranty in New York.



## Grant

Operations this far have been on a positive cash flow basis. The net receipts from stores, stores pay certain of their own expenses locally.

The net receipts coming in from the stores have approximated \$106 million. That is the money which is in the pipe line in part and which has already come in.

The company has not disbursed that amount as is indicated from the disbursements I read of.

Thus far it has been functioning on a positive cash flow basis. It probably undoubtedly has been suffering box losses in connection with stores closings, you have book losses other than inventories being sold and you have book losses on the fixtures in the stores that are being closed down.

We have been meeting with the creditors committee on a twice a week basis each Tuesday and Thursday and the meetings have been lengthy and entailed. We have been trying to keep the creditors --

Grant

it's an unofficial creditors committee fully advised with respect to the company's problems and progress.

We have another meeting scheduled for tomorrow, we had one yesterday. I think the committee has been acting very diligently to the point where I have heard excuses say, I wish they leave us time to run the company, but we recognize their need to be informed and we are trying to cooperate in every way possible and they certainly have been trying to cooperate with us.

I would like to ask on behalf of Grants that this hearing be adjourned for a short period of time, perhaps two weeks, so that we can again report back to the court and I would again ask that no indemnity bond be required of the company.

THE JUDGE: A date for the first meeting of creditors has been fixed, has it not?



1  
2  
3 MR. ROSEN: I believe it has been  
4 fixed the 19th. The committee may want a  
5 meeting the prior week. We will have no  
6 objection to the prior week.

7 THE JUDGE: Let me hear from the  
8 creditors committee.

9 MR. ITZLER: Your Honor, the  
10 creditors committee mentioned has been  
11 meeting every two Tuesdays and every  
12 Thursday. The meetings have lasted in  
13 excess of six hours each.

14 Consequently we feel we are as in-  
15 formed as is possible under the circum-  
16 stances. The company itself is under-  
17 taking a superhuman effort to solve a  
18 number of problems that stand between it  
19 and its eventual rehabilitation.

20 The creditors committee on a note  
21 of cautious optimism would agree to the  
22 adjournment of the XI-4 hearing but we  
23 respectfully urge that the hearing not  
24 be adjourned to the date set for the first  
25 meeting of creditors, that it be adjourned

Grant

to approximately a week prior thereto.

We think that the activity at the first meeting of creditors will be substantial. We think that the XI-4 hearing deserves a date of its own so that all items can be discussed. We would like to keep the court's finger on the pulse of this so we can know exactly where we are going at all times.

We urge that the adjournment be granted but for a period of somewhere in the neighborhood of November 11th or 12th.

THE JUDGE: All right. Does anyone else want to be heard with respect to the indemnity hearing?

MR. BADER: We feel that the hearing should not be adjourned, that a bond should be imposed.

As your Honor knows, when you adjourned the hearing the last time we filed a notice of appeal from that determination, whether or not we have the right to do that, of course, is another question,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Grant

which will have to be considered by the district judge.

There is some question with respect to it. I do feel that there has been substantial prejudice at this point. There have been payments of over \$53,million, presumably are legitimate.

We don't know this. We do feel that there has been substantial erosion of the estate and certainly an indemnity bond should be imposed.

MR. McCONNELL: What size indemnity bond are you suggesting.

MR. BADER: I am suggesting approximately \$5 to \$10 million.

THE JUDGE: Anyone else want to be heard?

MR. KAHN: I would like the record to indicate that the remaining debenture holders are opposed to indemnity at this point and joint in the request of the debtor and the committee that the debtor be permitted to continue its operation

Grant

without indemnity.

THE JUDGE: Anyone else care to be heard?

(No response.)

THE JUDGE: Hearing no response I will allow the debtor in possession to continue without indemnity until the date of the next adjourned meeting of the XI-4.

I will fix that date as November 12th at 10:00 o'clock.

The next matter I will take up is the matter of Simplicity Patterns.

MR. DREYER: I am appearing for Simplicity Pattern.

I have had a conversation with Mr. Gewerts representing the debtor. He has requested an adjournment of I believe two weeks.

MR. GEWERTZ: Until the 13th. There are about fifteen other similar motions which have been noticed for that date. I have put in answers to four similar motions which have been brought



Grant

saying the same thing.

There will be about twenty on the calendar for the 13th. At that point I would say to the court I would be making a motion addressed to the complaint as a matter of law.

I have also, your Honor, brought in as third party defendants in all of these actions representatives of persons claiming liens on the inventory.

These security agreements contain after acquired property clauses which as I read the law, there is a question as to whether or not the 2-702 claim is subject to those inventory liens.

Therefore, I brought in the secured suppliers committee, the secured debenture representatives and an agent of another secured party to assert their interest in the property which is the subject of all of these 2-702 actions.

On the 13th, I assume that they will have had an opportunity to put in



1  
2  
3 their answers and at that point we can fix  
4 a date I would think for serving briefs  
5 and we could decide the issues of law  
6 rather than try twenty-plus cases, which  
7 I assume there will be a few more coming  
8 in from time to time.

9 THE JUDGE: If I will follow Judge  
10 Carter's opinion in Giltex, would we ever  
11 reach these other areas that you raised?

12 MR. GEWERTZ: At that point it  
13 would be just a matter of the validity  
14 of the inventory lien, if you were to  
15 follow Judge Carter's decision.

16 On the other hand, if you would  
17 file your own decision, you would have  
18 the other question before you.

19 There has been a Circuit Court  
20 decision, your Honor, following you recent-  
21 ly on the west coast.

22 THE JUDGE: Would the same thing  
23 apply so far as adjournment of TLC Oil?

24 MR. GEWERTZ: All three others  
25 on the calendar have agreed to adjourn



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Grant

14

to the 13th, your Honor.

THE JUDGE: All right. Long Island  
Lighting and Baltimore Gas.

MR. GEWERTZ: They are slightly  
similar. I think the phone company is a  
special instance.

THE JUDGE: I didn't read that one.  
Long Island Lighting and Baltimore Gas.

MR. GEWERTZ: Long Island Lighting  
I have been talking to Mr. Sinon.

MR. SINON: There was no discussion  
with Mr. Gewertz last week. I haven't had  
an opportunity to chat with him this morn-  
ing. I would like to have that opportunity  
and perhaps this matter could be marked  
ready conference.

We are ready in the event no settle-  
ment can be reached I would like to proceed.

THE JUDGE: The thrust of your  
application really is you want a substan-  
tial deposit in order to continue the ac-  
count with the debtor in possession?

MR. SINON: That's correct, your

## Grant

1  
2  
3 Honor. Unfortunately our position has  
4 deteriorated since the filing, to the  
5 extent that we find ourselves owed ad-  
6 ditionally approximately \$80,000. There  
7 is a certain degree of urgency.

8 MR. GEWERTZ: Were you owed anything  
9 besides that?

10 MR. SINON: The \$106,000 we were  
11 owed at the time of filing.

12 THE JUDGE: I want to know whether  
13 or not Grant is paying the debts as they  
14 become due.

15 MR. ROSEN: That represents charges  
16 post October 2nd.

17 MR. SINON: The bills have been  
18 rendered, we haven't received any money.

19 THE JUDGE: Suppose you confer  
20 with counsel and I will be available in  
21 my chambers.

22 What is the story with Baltimore  
23 Gas & Electric?

24 MR. GEWERTZ: We were served late  
25 Friday afternoon. We have an order to



Grant

show cause returnable today.

I have served answering papers on counsel for Baltimore Gas this morning. I would like to hand them up.

Basically it is similar to Long Island Lighting. They want two months deposit.

THE JUDGE: Let me hear what the urgency of Baltimore Gas & Electric is.

MR. BERGEN: The point is, your Honor, that Baltimore is deeply concerned about being secured in its payment for the light, gas in the six stores which Grant has in its service area.

The monthly bills run on the order of \$28,000. Baltimore continues to supply electricity, of course, to the six stores in compliance with your Honor's two injunctive decrees of October 2nd and October 20th, which, of course, prohibit Baltimore from turning off the gas and electricity.

Pre-bankruptcy debts of \$18,000



Grant

1  
2  
3 we are not concerned with at this time.  
4 What we are concerned about is assuring  
5 the company for payment for continued  
6 service.

7 THE JUDGE: Are you being paid on  
8 a current basis, do you know?

9 MR. BERGEN: No bills have been  
10 paid since that time.

11 THE JUDGE: Mr. Rosen said it would  
12 be paid on a current basis.

13 MR. BERGEN: We were assured that  
14 we would have been paid before October 2nd.  
15 Also, we find ourselves as an unsecured  
16 creditor.

17 The bad debts of the Baltimore  
18 are increasing, about 400 per cent increase  
19 in their service area for bad debts over  
20 the recent times and we feel that it is  
21 not a tremendous burden on this debtor  
22 which we heard today has over \$100 million  
23 in cash to put up a \$50,000 deposit.

24 We feel that you know the legal  
25 arguments here, your Honor. I point out



Grant

1  
2  
3 under Maryland law that Baltimore is en-  
4 titled to request a deposit and is entitled  
5 to turn off the lights in the event a  
6 deposit is not paid.

7 THE JUDGE: Does this court have  
8 any discretion as to the amount of that  
9 deposit?

10 MR. BERGEN: I take the position  
11 it does not, your Honor.

12 THE JUDGE: You rely on the tariff  
13 as fixed by the state law?

14 MR. BERGEN: Yes, sir.

15 THE JUDGE: Are you familiar with  
16 my opinion in the New York Telephone case?

17 MR. BERGEN: I am.

18 THE JUDGE: That is on appeal.  
19 I am not sure that I am that right. I  
20 would be inclined to follow my own opinion  
21 in that case, at any rate, and impose a  
22 deposit of less than the two months that  
23 you require.

24 Perhaps you might follow the lead  
25 of Long Island and discuss it with counsel.



Grant

Perhaps you can be satisfied as to some level that would give more of a comfort that they seek and it may be resolved. Otherwise I will decide it on the papers.

MR. BERGEN: A lesser deposit, your Honor, is a possibility, as a matter of principal we don't like it. I would have to discuss it further with my client.

THE JUDGE: Bear in mind that Grant is being faced with this problem.

MR. BERGEN: We understand that and we are very sympathetic with Grant's position.

Our problem we have to protect ourselves and customers in our business also in an era where bankruptcy seems to be coming more in vogue, I am sorry to say.

I will discuss this with counsel for Grant, as your Honor suggests. My thought is though if a lesser deposit were to be required, the order should permit Baltimore to discontinue service in the event bills are not timely paid



Grant

without applying to the court.

THE JUDGE: Well, I am not willing to yield that kind of authority at the moment. Why don't you discuss it and see where you come out:

MR. GEWERTZ: May I be heard for a couple of minutes on this?

THE JUDGE: Certainly.

MR. GEWERTZ: I don't concede that Baltimore Gas is entitled to any deposit in this proceeding whatsoever as a continuance of service.

I pointed out to the court in my brief in the telephone company case and it is in here too, that the California Public Utilities Commission has recently come down and followed the Supreme Court's case of Perez versus Campbell, in which the Supreme Court held that an Arizona statute which required a motorist to pay for a judgment in an automobile accident as a pre-condition to getting his license back, notwithstanding a bankruptcy



Grant

1  
2  
3 discharge, was unconstitutional as viola-  
4 tive of the supremacy clause of the United  
5 States Constitution.

6 If the accumulative effect of  
7 these deposits, one deposit alone, is to  
8 impede the reorganization proceeding, I  
9 would submit to the court that the same  
10 principal ought to be followed, that just  
11 because state law authorizes tariffs which  
12 give the utility the right to require a  
13 deposit on the paying of cutting off ser-  
14 vices, if the deposit demand is not met,  
15 that also would impede the rehabilitative  
16 purpose of Chapter XI and the bankruptcy  
17 statutes here, thus the statutes under which  
18 they purport to make this request should  
19 be stricken.

20 The fact here are very clear.  
21 Grant prior to the bankruptcy -- the  
22 Chapter XI proceeding was paying \$3 million  
23 a month to utilities.

24 If every utility came in here and  
25 wanted a two-month deposit, that would  
be \$6 million.



## Grant

1  
2  
3 The cash -- there is cash, more than  
4 \$6 million, but that cash is necessary to  
5 purchase goods for the coming Christmas and  
6 spring seasons, your Honor.

7  
8 That is the essence of the key to  
9 the success of this proceeding. If Grant  
10 were to be required to put up deposits  
11 in that magnitude or even one month's  
12 deposit, the effect could be devastating.

13 I would suggest alternatives. I  
14 have been trying to work out an arrange-  
15 ment whereby we could estimate the amount  
16 of each monthly bill and pay on a weekly  
17 basis if that was possible, as we went  
18 along.

19 In this way the billing lag which  
20 most of these utilities -- that is their  
21 main problem, they render service and they  
22 don't bill until four to six weeks later,  
23 because of the nature the way they compute  
24 the bills, the way service is rendered.

25 That would be one way of solving  
the problem.

Grant

1  
2  
3 THE JUDGE: You are talking about  
4 weekly payments in advance?

5 MR. GEWERTZ: Of an estimated  
6 amount, yes. I think that would be to the  
7 advantage of all parties here. Grant  
8 would not be required to keep this constant  
9 pool of money, in effect, in a bank with  
10 the utility companies.

11 THE JUDGE: All right, I am going  
12 to reserve decision on this but I do sug-  
13 gest that you explore any area that could  
14 be satisfactory to both of you.

15 MR. GEWERTZ: Of course we are  
16 willing to have the direction of the court  
17 if the direction be needed that we pay  
18 bills currently as rendered.

19 THE JUDGE: I will wait until I  
20 hear from you two as to how your conver-  
21 sations progress. I will be in chambers.

22 MR. BERGEN: Thank you very much,  
23 your Honor.

24 - - -  
25



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

In the Matter  
of

W. T. GRANT,

Debtor.

No.

75 B 1735

U. S. Courthouse,  
Foley Square,  
New York, New York.

October 29, 1975.

OCS - NY Telephone Co.

B E F O R E :

HON. JOHN J. GALGAY,

Bankruptcy Judge

Adjourned to November 5, 1975, at 10:30 o'clock A. M.

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

CORTLANDT 7-3877  
3878

JA-81

A P P E A R A N C E S :

WACHTELL, LIPTON, ROSEN & KATZ, ESQ.,  
Attorneys for Debtor,  
299 Park Avenue,  
New York, New York.

BY: LEONARD ROSEN, ESQ.,  
-and-  
THEODORE GEWERTZ, ESQ.,  
of Counsel.

GEORGE F. ASHLFY, ESQ.,  
Attorney for N. Y. Telephone,  
1095 Avenue of Americas,  
New York, New York.

BY: PATRICK F. WALSH, ESQ.,  
of Counsel.

- - -

P R O C E E D I N G S

MR. GEWERTZ: We have one other,  
New York Telephone Company.

MR. WALSH: Your Honor, may I leave  
with the court a copy of the brief which  
was served yesterday afternoon on the  
debtor in possession on behalf of New York  
Telephone Company.

THE JUDGE: Counsel, I probably  
asked you before, what is the posture of  
the appeal on the New York Telephone case?

MR. WALSH: Your Honor, the Hartfield-  
Zody's case is scheduled now for argument



Grant

in the district court in November. That is my understanding from Mr. Reid, my colleague who is handling that case and who argues that case before your Honor.

THE JUDGE: What District Court judge has been handling it?

MR. WALSH: As far as I was able to tell it was in the miscellaneous motion part for the October calendar and has been put over thirty days to November.

THE JUDGE: All right.

MR. WALSH: Your Honor, in this application, the New York Telephone Company pursuant to its schedule of tariffs on file with the Public Service Commission of the State of New York, seeks to obtain modification of this court's October 2nd restraining order so as to permit the New York Telephone Company pursuant to its schedule of tariffs on file with the Public Service Commission here in New York to obtain from the debtor in possession, not from the debtor, from its new customers,



the debtor in possession, a security deposit in the sum equal to two months of that customer's average monthly billing.

We also seek in this application to have this court modify its September or October two restraining orders so as to require prompt payment of bills by the debtor in possession as rendered.

That latter element is mooded somewhat by the debtor in possession's answering papers in which it recites that it has no objection to that element of this application, that element which seeks prompt payment of bills as rendered.

I think it is important, your Honor, that we understand here just what we are looking for.

The New York Telephone Company is not in this application to this court looking for any of the money that was owed to us by the debtor, with the Grant at the time it went under, at the time it filed under Chapter XI.



Grant

I think that is important, your Honor, particularly in view of the reliance placed in W. T. Grant's brief and in counsel's arguments here this morning on the decision of the California Commission involving One On One Plating Corporation and Pacific Tel and Tel.

That case involves an effort, your Honor, to effectively collect a pre-Chapter XI debt by the telephone company there involved.

That state commission and not the Federal Bankruptcy Court or Federal District Judge but the State Commission, they are available in these situations, your Honor, the State Utility Commission in that case did examine what was being done in that case and found in effect an attempt to get a priority that was not otherwise there under Federal law.

By requiring a debtor in possession there to assume the re-filing indebtedness -- that is not involved here, your Honor.



Grant

1  
2  
3 The Telephone Company in this case  
4 wants a security deposit from the debtor in  
5 possession for services now being rendered  
6 and to be rendered to the debtor in pos-  
7 session. We want that under our tariffs  
8 which are on file with the New York Com-  
9 mission and which we are entitled to under  
10 those tariffs.

11 We respectfully submit, your Honor,  
12 that this court does not have jurisdiction,  
13 summary jurisdiction to tell us that we  
14 cannot have that deposit as a condition  
15 to rendering telephone service.

16 There is no question here in our  
17 application of any unlawful priority such  
18 as is found to be unacceptable by the  
19 California Commission in the case cited  
20 by Grant.

21 We have a tariff, it has the force  
22 and effect of law in New York. That pro-  
23 vision of the tariff which permits us  
24 to ask for exactly what we seek here, a  
25 two month security deposit where the



Grant

1  
2  
3 financial condition on these subscribers  
4 is certainly open to question as I sub-  
5 mitted it is in this case, is a provision  
6 that has been found reasonable, comparable  
7 provisions have been upheld by the Supreme  
8 Court of the United States by the Federal  
9 courts and by the State courts.

10 The State courts in New York and  
11 elsewhere, I should add, your Honor.

12 Your Honor, this court lacks sum-  
13 mary jurisdiction to tell us, you can't  
14 have a deposit from W. T. Grant which is  
15 geared to our tariff and to the average  
16 monthly bill or the average monthly volume  
17 of telephone service utilized by that  
18 customer.

19 If Grant were billed \$10,000 a  
20 month by New York Telephone and we came  
21 in and demanded a \$75,000 deposit, that  
22 would violate our own tariffs, that would  
23 be on its face unreasonable and I wouldn't  
24 suggest in that situation that this court  
25 would have to say, well, there is nothing



Grant

I can do about it.

That is not what is being done here, Judge Galgay. What is being done here we are asking a customer who is being billed an average of \$123,000 a month by the New York Telephone Company in its operations within our service area to give us \$246,000 as a condition for our continuation of telephone service.

That two month provision in our tariff, your Honor, is there and it is related -- it is not an arbitrary figure. It is related to the realities of billing in this industry.

We can't install pay telephones at Grant. It does take a certain amount of time to render a bill, to assemble the data and then a certain amount again of reasonable time to determine from the subscribed whether there is a problem in paying it or what the problem is. Cut-off notices don't go out automatically.

Even where they are sent an effort



Grant

1  
2  
3 is made on let us say the 8th day or the  
4 13th day mentioned in such a notice to  
5 contact the subscriber.

6 The record here indeed, your Honor,  
7 is replete as set forth in the affidavit  
8 which I have submitted is replete with  
9 evidence that for a year prior to the fil-  
10 ing the New York Telephone Company made  
11 every effort to accommodate, did make an  
12 effort to accommodate W. T. Grant. Did  
13 not go in then and say, all right, right  
14 off the bat a year ago when they started  
15 experiencing these difficulties, you are  
16 in trouble, you are facing trouble, you  
17 come under our tariff, give us the two  
18 months.

19 We did not at that time and we  
20 don't at this time want to push anybody  
21 to the wall, your Honor. We accommodated  
22 W. T. Grant for that year.

23 We made arrangements with them.  
24 That proved acceptable right up to the  
25 end, prompt payment is a fine thing.



Grant

2

3

It is great if you get your bill paid  
three day s after you received it. If  
you get that done for eleven months.

6

7

8

9

10

11

12

13

If you send the bill on the 12th  
month or if before you close the billing  
period for that 12 months while you still  
assembled two-thirds or three-quarters or  
more of that billing period and your sub-  
scriber files under Chapter XI, that cer-  
tainly is for the foreseeable future good.  
That arrangement --

14

15

THE JUDGE: How much were you  
affected? What was the amount?

16

17

18

19

MR. WALSH: The amount is not yet  
fully assembled. It is estimated as set  
forth in our affidavits that it will ex-  
cede the sum of \$100,000.

20

21

22

THE JUDGE: Have you any idea as  
to whether or not Grant has cut back on  
its telephone use since October 2nd?

23

24

25

MR. WALSH: Essentially, your  
Honor, what I see in the present, I am  
certainly not going to challenge anything



that Mr. Rosen or counsel have said here this morning about proposals of Grant to close down stores or cut back operations around the country.

THE JUDGE: I think what I am driving at, suppose their use as a debtor in possession were only \$20,000 a month as opposed to \$123,000, would you revise your request?

MR. WALSH: If it were clear that was going to be the usage. I have no fascination with the numbers. I want two months security. If that comes out \$14 rather than \$246,000, then I will take the \$14.

If I may just briefly and I realize I have been at this a while now -- I am sure you will give counsel every opportunity to respond.

The equitable jurisdiction of this court, your Honor, is something that I believe greatly concerned you in your Hartfield-Zody's decision. I think that



Grant

1  
2  
3 what you said there is that the Bankruptcy  
4 Law, Section 2 of the Bankruptcy Law gives  
5 this court a great range of equitable juris-  
6 diction to facilitate the debtor's opera-  
7 tions to guard the debtor in possession's  
8 operations and to make every effort to see  
9 that the debtor survives.

10 THE JUDGE: Or has an opportunity  
11 to survive, really.

12 MR. WALSH: Fine, your Honor.

13 I think it was on that basis per-  
14 haps that your Honor found or felt that  
15 you had jurisdiction to say in Hartfield-  
16 Zody's as you yourself put it, to say  
17 what is a reasonable deposit.

18 Your Honor, again I respectfully  
19 submit that that holding directly contra-  
20 venes the law in this circuit as set forth  
21 in the decision in Slendarella Systems  
22 of Berkley, against Pacific Telephone.

23 Your Honor, in that case --

24 THE JUDGE: I am familiar with  
25 that, counsel. Maybe this is an opportune



Grant

1  
2  
3 time to have the Court of Appeals look  
4 at it again.

5 MR. WALSH: Was that for me to  
6 take up to them, your Honor?

7 THE JUDGE: I gather it is on its  
8 way up in Hartfield-Zody's.

9 MR. WALSH: Perhaps it is, your  
10 Honor.

11 Again, with all respect to your  
12 Honor, it was my impression that the law,  
13 the Second Circuit is the law of the Second  
14 Circuit until the Second Circuit changes  
15 it.

16 THE JUDGE: Go ahead.

17 MR. WALSH: In that case, your  
18 Honor, the court held, and I will be very  
19 brief, I promise you on this, I don't  
20 intend to go on about the case. It held,  
21 very briefly, that a debtor in possession  
22 has no property interest in telephone  
23 numbers and I submit service, to which  
24 this court's summary jurisdiction could  
25 attach and that absent summary jurisdiction



Grant

2  
3 in the first instance, the equitable jur-  
4 isdiction of the court on which I believe  
5 your Honor relied so heavily on in Hartfield-  
6 Zody's cannot follow, cannot be exercised,  
7 absent the summary jurisdiction.

8 The Fifth Circuit doesn't like that  
9 decision and the Ninth Circuit does.

10 I submit, your Honor, that is the  
11 law here in the Second Circuit.

12 I submit that again particularly  
13 in the case where I respectfully submit  
14 the request is not an unreasonable one,  
15 a deposit request, the tariff provision  
16 pursuant to which it is made is upheld as  
17 reasonable throughout the country in  
18 State and Federal courts including the  
19 Supreme Court.

20 We are not seeking any unconstitu-  
21 tional priority with respect to pre-existing  
22 debts in this case. The only relevance  
23 of pre-existing debt of the prior debtor  
24 for our purposes, your Honor, is that it  
25 demonstrates I submit to the court the



Grant

1  
2  
3 hazard that we face in even these accom-  
4 modation relationships.

5 We can talk of how a debtor can  
6 be pushed to the wall by multiple demands  
7 for security deposit.

8 I don't accept the fact that \$3  
9 million a month equals a \$6 million deposit  
10 demand if you grant my application and  
11 grant us the deposit that we seek.

12 I see only three utilities here  
13 this morning, your Honor. I am sure that  
14 there are more and there will be.

15 Let me say I have heard only  
16 three, Mr. Gewertz. Given the situation  
17 as described by Mr. Rosen earlier this  
18 morning and given what I believe to be  
19 reasonably accurate present reports of  
20 what merchandise suppliers to the debtor  
21 in possession, what type of arrangements  
22 they are delivering their goods and ser-  
23 vices under, they are C.O.D.

24 If counsel is going to say, you  
25 utilities even accepting his \$6 million



Grant

figure are pushing us to the wall, why do we bear the brunt of that. Why do we equitably bear the brunt of that. Why not have the merchandise suppliers deliver on sixty days credit, because they won't. They just won't.

THE JUDGE: They are not monopolies.

MR. WALSH: We are regulated monopolies.

I am here under the very scheme of regulation, to ask for this deposit.

THE JUDGE: Let me hear from the debtor in possession.

MR. GEWERTZ: Your Honor made one of my points for me just now. We don't have any choice in the matter. We can only go to the telephone company for our telephone service.

At this day and age there is only one telephone company in the New York area, unfortunately.

On jurisdiction, summary jurisdiction,



Grant

I don't want to repeat the arguments I have made previously. On summary jurisdiction, though, which counsel has just raised in his memorandum which I received last night, if your Honor will notice, the moving papers don't whisper a word about lack of jurisdiction for this court to fix the reasonable amount of deposit.

Quite apart from that, as your Honor also quite rightly pointed out, the Slenderella case only dealt with the issue of whether or not the debtor in possession had a property interest in a particular telephone number.

THE JUDGE: Counsel wants to expand that included service.

MR. GEWERTZ: I don't believe any court has so held, and I believe a number of courts have held to the contrary.

The Fifth Circuit in the recent Fountainbleu Hotel case has held to the contrary and they decided that the utility there was not entitled to any deposit.

## Grant

The Third Circuit in the Penn Central transportation case also construed the question as one of balance equities and it saw that there were forty utilities demanding deposits and it decided under all the facts that no deposit was necessary so long as the utility was protected with the order of the court requiring the debtor to make current payments.

The question is not one of whether or not there is a "proper interest," but it is a question of this court's power to deal with the estate of the debtor to prevent the debtor from being put out of business by the whom of the utility which is in a monopoly position.

The utility services are to most businesses, including Grant's, the lifeblood of the company.

The broad equitable power of the court, this court as your Honor has ruled in the Hartfield-Zody's case, is the lifeblood of the company. This court has the



Grant

1  
2  
3 duty to give the debtor in possession  
4 a chance to rehabilitate itself under the  
5 applicable laws.

6 I would point out that the same  
7 reasoning would apply as I mentioned before,  
8 any statute which gives the company, the  
9 utility company, its right to cut off  
10 service just because a debtor does not  
11 possess a deposit or does not possess  
12 the amount of the deposit that the utility  
13 is seeking under its tariffs, would seem  
14 to me to be unconstitutional.

15 I think at the very least the court  
16 has the power to decide the reasonable-  
17 ness of the amount of the deposit.

18 Further than that there is no re-  
19 quirement that the utility here asks for  
20 two months deposit.

21 The tariff, its own tariff doesn't  
22 say it must ask for two months. It says  
23 it may ask for up to two months.

24 I think the telephone company is  
25 losing sight of that also.

Grant

THE JUDGE: There is also a non-discrimination clause in there, is there not?

MR. WALSH: There is, your Honor.

MR. GEWERTZ: I would think this depends on the very least, if your Honor does not wish to go so far as to hold that the request for a deposit is simply invalid under the statutes which authorize the request is invalid under the supremacy clause of the constitution, at the very least the court does have the power to determine what is an adequate deposit under all the circumstances taking into consideration on the one hand the needs of the company and I might point out that the telephone company's own papers admit that Grant faithfully -- this is counsel's own words -- faithfully paid every bill rendered to it right up to the bitter end.

MR. WALSH: Right up to the last bill.

MR. GEWERTZ: If I may quote --



Grant

THE JUDGE: I understand your point.

MR. GEWERTZ: Faithfully paid its telephone bills right up to the "bitter end" of the Chapter XI filing. That is at Mr. Braunnlich, Paragraph 21 of the telephone company's affidavit.

There has been no bad faith on the part of Grant.

THE JUDGE: I think I heard enough. Mr. Walsh, I will review your papers in light of the Hartfield-Zody's decision that I did make.

Let me ask this: Suppose that Grant offered to pay a predicted week in advance of what your telephone service might be, similar to the offer he made to other utilities, while I am pondering this question, would any great harm come to the telephone company?

MR. WALSH: Your Honor, you stop me cold, I suppose, by speaking of great harm. Just as I suppose counsel argues

Grant

1  
2  
3 cumulative deposit can hurt Grant, cumula-  
4 tive defaults can hurt us.

5 THE JUDGE: There is no default  
6 currently. I want to put you in a position  
7 where you would be sure your bills would  
8 be paid while I undertake the review of  
9 your papers and what I said in Hartfield-  
10 Zody's.

11 MR. WALSH: If I can just focus  
12 for a minute what you said in Hartfield-  
13 Zody's. You gave a month there. You  
14 allowed a month in that case and you made  
15 provision for accelerated payment of bills  
16 we rendered.

17 If that were applied here, your  
18 Honor, to a situation with W. T. Grant,  
19 this is an enormous user of telephone  
20 service. The fact is, it is the life  
21 blood of their business, it is fine and  
22 we like it.

23 THE JUDGE: I assume that they  
24 have cut back substantially on their use  
25 of telephones. At least I would hope so.



Grant

1  
2  
3 MR. WALSH: I am certainly not  
4 going to walk away from any proposition  
5 or any proposal that the court suggests  
6 this morning.

7 May I just say that if you are  
8 going to suggest arrangements alternative  
9 to those I have requested then I would  
10 ask in that case even for purposes of  
11 discussions between my client and Mr.  
12 Gewertz' client, that those discussions  
13 be held along the lines that you adopted  
14 in Hartfield-Zody's.

15 That is to say that we get a  
16 month and that is to say that we then  
17 talk about what type of payment in between.

18 The problem is, your Honor, simply  
19 in terms of how you get a bill out and get  
20 it paid.

21 We don't, I represent to the court  
22 in my experience, we simply do not turn  
23 around in this situation or in any, and  
24 say on the 8th day after notice that we  
25 sent out, it is not here, pull the plug,

## Grant

contacts are made.

THE JUDGE: You are aware, Mr. Walsh, if W. T. Grant is going to survive in this proceeding it really has to have cash available to buy goods and resell the goods from which they make a profit.

My intention is just to see whether or not by agreement you would reduce your demands that might still allow Grant to have access to cash that it can turn into goods and turn into profits.

MR. WALSH: Would you approve arrangements that involve a situation comparable, identical that you approved in Hartfield-Zody's?

THE JUDGE: Right now I would be inclined. I would like to have you talk to counsel for Grant and see whether or not --

MR. WALSH: Your Honor, you have been patient this morning. There were one or two things. I can very briefly say that Slenderella did not just involve



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Grant

telephone numbers. It involved turning  
somebody's services off, if he didn't pay  
a pre-existing debt or take a new number.

It was much more drastic in that  
case, your Honor. That court stated that  
this court lacks jurisdiction in circum-  
stances that were much more drastic than  
those involved here.

I am not saying to cut off any-  
body from pre-exisiting service.

The Fountainbleu case didn't in-  
volve a security deposit, it involved that  
same situation where the debtor in possession  
was asked to assume the pre-existing debt  
of the company or to face a chance in the  
telephone number.

The court there was offended by  
that and didn't like what it saw as an  
effort to what it viewed as an effort to  
pressure the Fountainbleu in paying the  
pre-filing debt.

That is not involved here.

THE JUDGE: I am not suggesting

Grant

1  
2  
3 that New York Telephone is being high-  
4 handed at all. I am trying to resolve  
5 this matter in the most equitable fashion  
6 I can.

7 My suggestion is this: I will  
8 mark this sub judice, have a discussion  
9 with counsel for the debtor and report  
10 to me within seven days as to anything  
11 that you can work out.

12 If you can't perhaps I will im-  
13 pose the Hartfield-Zody's type --

14 MR. GEWERTZ: May I point out a  
15 couple of facts to your Honor.

16 My information is, I don't have  
17 the complete information on the anticipated  
18 cut-down of use by the stores serviced  
19 by the New York Telephone Company, but  
20 thus far it is anticipated that at least  
21 \$5,000 a month out of the home office  
22 billing has been cut down by virtue of  
23 cut-backs.

24 In addition to that the court  
25 ought to be aware and it is in our papers



Grant

1  
2  
3 that of the monthly usage actually \$39,000  
4 is paid in advance. That consists of  
5 \$26,000 WATS line service and \$13,000 for  
6 rental of home office equipment.

7 A large part of the money is being  
8 paid in advance because these monies are  
9 paid for the next month.

10 THE JUDGE: It may take you a few  
11 days to get a hand on what economies have  
12 already been put into effect.

13 MR. GEWERTZ: What I would sug-  
14 gest, your Honor, if your Honor does reach  
15 the point where it wants to decide on the  
16 basis of what is one month's usage or  
17 what is two months' usage, that we have  
18 a brief hearing on it at some future date  
19 just to get what the anticipated usage is.

20 THE JUDGE: I am not going to  
21 let the telephone company hang fire that  
22 long.

23 MR. WALSH: I am prepared for  
24 such a hearing this morning.

25 THE JUDGE: I am going to restate

Grant

my position. I want you two to talk and report to me within seven days. If you can report earlier, so much the better.

In the meantime, I will reserve decision.

MR. WALSH: Are we on for next Wednesday morning, your Honor?

THE JUDGE: Yes. I will mark that held and adjourned to 11/5.

Any other matters before the court?

MR. GIMERTZ: None.

- - -



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
(In Bankruptcy)

In the Matter  
of

W. T. GRANT CO.,

Debtor

No. 75 B 1735

U. S. Courthouse  
Foley Square  
New York, N. Y.

November 5, 1975  
10:30 o'clock A.M.

ADJ. OSC (Baltimore Gas)

B E F O R E:

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

CORTLANDT 7-3877  
3878

JA-109

## A P P E A R A N C E S:

WACHTEL, LIPTON, ROSEN & KATZ, ESQS.,  
Attorneys for Debtor,  
299 Park Ave.  
New York, N. Y.

BY: THEODORE GEWERTZ, ESQ.,  
Of Counsel

WEIL, GOTSHAL & MANGES, ESQS.,  
Attorneys for Creditors,  
767 Fifth Ave.  
New York, N. Y.

BY: ALAN MILLER, ESQ.,  
Of Counsel

BALLON, STOLL & ITZLER, ESQS.,  
Attorneys for Creditors,  
1180 Sixth Ave.  
New York, N. Y.

BY: RONALD S. ITZLER, ESQ.,  
Of Counsel

LE BOEUF, LAMB, LEIBY & MacRAE, ESQS.,  
Attorneys for Baltimore Gas,  
140 Broadway,  
New York, N. Y.

BY: G. S. PETER BERGEN, ESQ.,  
and  
SIDNEY C. MILLER, ESQ.,  
Of Counsel

GEORGE E. ASHLEY, ESQ.,  
Attorney for N. Y. Telephone Co.,  
1095 Sixth Ave.  
New York, N. Y.

BY: PATRICK F. WALSH, ESQ.,  
Of Counsel



## A P P E A R A N C E S:

JULES TEITELBAUM, ESQ.,  
Attorney for Indiana Bell,  
51 East 42nd Street,  
New York, N. Y.

BY: NORMAN KLASFELD, ESQ.,  
Of Counsel

JOHN SINON, ESQ.,  
Attorney for Lilco,  
1 Old Country Road,  
Carle Place, N. Y.

DAVIS, POLK & WARDWELL, ESQS.,  
Attorneys for Creditors,  
One Chase Manhattan Plaza,  
New York, N. Y.

BY: PHILIP C. POTTER, JR., ESQ.,  
Of Counsel

SHEARMAN & STERLING, ESQS.,  
Attorneys for Creditors,  
53 Wall Street,  
New York, N. Y.

BY: JOHN E. HOFFMAN, JR., ESQ.,  
Of Counsel

HAHN, HESSEN, MARGOLIS & RYAN, ESQS.,  
Attorneys for Secured Suppliers  
Committee,  
350 Fifth Ave.  
New York, N. Y.

BY: J. J. HAHN, ESQ.,  
and

POPPER & POPPER, ESQS.,  
200 Fifth Ave.  
New York, N. Y.

BY: WILLIAM I. POPPER, ESQ.,  
Of Counsel

1  
2  
3 APPEARANCES:4 DE BEVOISE, PLIMPTON, LYONS & GATES, ESQS.,  
5 Attorneys for Creditor,  
299 Park Ave.

6 New York, N. Y.

BY: WILLIAM A. NEWMAN, ESQ.,

Of Counsel  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. BERGEN: I ask leave to enter

Mr. Miller's appearance in this case.

THE JUDGE: Yes, for this case,  
you are welcome here.

MR. BERGEN: I have served Mr.  
Gewertz with an affidavit and memorandum  
in reply to his memorandum last week. I  
ask leave to hand that to you. I will  
file the original and copies with the Clerk  
this morning.

Baltimore, in response to Your  
Honor's direction last week, we conferred  
with Mr. Gewertz, counsel for W. T. Grant.  
There was a good deal of discussion back  
and forth. I must say that W. T. Grant and  
its counsel have been most cooperative.



1  
2  
3 However, I have to report to Your Honor  
4 that we were unable to accept any of the  
5 alternatives to the two month deposit which  
6 Baltimore has originally petitioned for.  
7 I think the problem was expressed by  
8 Mr. Walsh for the Telephone Company just  
9 a few minutes ago, is virtually the same  
10 problem in the case of Baltimore. The  
11 problem being that there is not sufficient  
12 time with the one month deposit for the  
13 utility to be made secure, particularly in  
14 the event of delay in payment and particularly  
15 in the event of ultimate liquidation of the  
16 debtor in possession, a matter as we saw  
17 this morning in the REA situation, which is  
18 not impossible. Baltimore's judgment is  
19 that it should not surrender what it believes  
20 to be its legal tariff right and accept a  
21 lesser deposit than a two month deposit.

22 Only in the event that the  
23 company have some right to discontinue  
24 service, on notice, of course, but --  
25 a notice to Grant but without leave of

1  
2  
3 Court would we feel that we could accept  
4 a lesser deposit. Our problem again being  
5 that we have to be in a position if it is  
6 felt, to cut the losses before they occur.  
7 Otherwise we will be rendering service  
8 without security.

9 The way these things go, we will  
10 wind up with a loss. This has been Baltimore's  
11 experience in some other debtor in possession  
12 cases which are described in the affidavit of  
13 Mr. Harvey, which I have just handed to  
14 Your Honor. I want to state for the record  
15 my one remark in response to your comment  
16 that a monopoly --

17 THE JUDGE: Regulated monopoly.

18 MR. WALSH: Regulated monopoly.

19 THE JUDGE: My correct statement  
20 was, I view a regulated monopoly differently.  
21 I am not trying to establish any different  
22 legal position.

23 MR. WALSH: I am trying to persuade  
24 Your Honor to a different view because it  
25 is certainly just as important, if not more



1  
2  
3 important that the utilities be paid. Their  
4 rates have to be adjusted upwards so long  
5 as the Public Service Commission will give  
6 them the rate increases, that is necessary  
7 to make up for the deficit in their  
8 revenue that results from insolvency.

9 If it doesn't it is the stockholders  
10 of the company that eat the difference. A  
11 monopoly is -- the monopoly status of the  
12 utility doesn't make one bit of different  
13 in this kind of situation than -- just the  
14 same as a supplier of thread. He gets  
15 cash on the line. That's what the utilities  
16 are trying to accomplish with their deposit  
17 requirement here.

18 With respect to Hartfield Sodas,  
19 we must respectfully take exception to Your  
20 Honor's decision, as we have said in our  
21 memorandum of law. We believe that your  
22 relay answer on Penn Central was misplaced,  
23 that the Third Circuit in Penn Central did  
24 not address the problem of Section 1959 B  
25 of Title 28. In essence, the Third Circuit

1  
2  
3 skipped that issue. With respect to a  
4 tariff, it is our position that a utility  
5 tariff constitutes a valid state law and a  
6 debtor in possession who is managing the  
7 business has to manage the business in  
8 accordance with the valid state law.

9 If Grant doesn't like Baltimore's  
10 demand for a two month deposit, its sole  
11 remedy is with the Maryland Public Service  
12 Commission but not with this Court.

13 THE JUDGE: Well, that might take  
14 longer than would be healthy for Grant to  
15 be contesting whether or not it should  
16 have gas and electricity in its stores.

17 MR. BERGEN: We are not seeking  
18 to turn off service, we are only seeking  
19 a deposit for service. We understand --

20 THE JUDGE: But if you don't get  
21 it, you'd like authority to turn it off.

22 MR. BERGEN: Certainly, if we  
23 don't get paid we want to turn it off before  
24 our losses are cut.

25 THE JUDGE: I am satisfied that



1  
2  
3 the equities that I balance in the Hartfield  
4 Sodas case could reoccur and every utility  
5 that had any connection with Grant stores,  
6 headquarters or otherwise could raise havoc  
7 if they all insisted on two months deposit  
8 such as Baltimore does in this case.

9 I don't have any statistics  
10 available but my common sense tells me a  
11 huge fund could be diverted into continuing  
12 a debtor in possession for the use of  
13 services of public utilities and denies him  
14 the use of some of those funds that could be  
15 used for the purchase of goods that could  
16 be sold at a profit.

17 MR. GEWERTZ: I have a figure  
18 based on a 600 store operation. Just on  
19 electric, gas and water, a two month basis  
20 would come out to \$2,724,000.

21 THE JUDGE: Counsel, before  
22 hearing your argument, could you live with  
23 a Hartfield Sodas type of deposit?

24 MR. GEWERTZ: Yes, one of the  
25 proposals which I had made -- I might inform

1  
2  
3 the Court that originally I thought  
4 that one of my proposals had been accepted  
5 but eventually the company back-tracked  
6 from that, not the attorney, the company  
7 back-tracked from that. Yes, we can live --  
8 in fact, I have reached a settlement with  
9 a non-litigating utility company, in effect,  
10 based on the Hartfield Sodas type decision.  
11

12 THE JUDGE: Strictly Hartfield  
13 Sodas or is it payment in advance?

14 MR. GEWERTZ: No, a one month  
15 deposit.

16 THE JUDGE: All right, why don't  
17 you settle an order on notice and of course  
18 you are free to appeal from my decision,  
19 from any decision that I make.

20 MR. BERGEN: Thank you very much.  
21  
22  
23  
24  
25



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
In the Matter of :

W.T. Grant Company, :

Debtor-in-Possession, :

Baltimore Gas and Electric  
Company, :

Petitioner-Appellant, :

-against- :

W.T. Grant Company, :

Respondent-Appellee. :

Index No. 75 B 1735

NOTICE OF ENTRY OF ORDER

----- -x  
TO: WACHTEL, LIPTON, ROSEN & KATZ  
Attorneys for Respondent-Appellee  
299 Park Avenue  
New York, New York 10017

NOTICE IS HEREBY GIVEN of the entry on November 17,  
1975 of an order, of which the within is a true copy.

Dated: New York, New York  
November 21, 1975

LeBOEUF, LAMB, LEIBY & MacRAE

By

*Samuel M. Saperstein*  
Attorneys for Petitioner-Appellant  
BALTIMORE GAS AND ELECTRIC COMPANY  
Office and Post Office Address  
140 Broadway  
New York, New York 10005  
(212) 269-1100

LeBOEUF, LAMB, LEIBY & MacRAE

SERVED

DATE

BY

FILED

BY

RECEIVED

DATE

BY

FILED

BY

FILED

BY

FILED

BY

ALL & RETURN

11/21/75 *SW*

DOCUMENT No. 12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED

NOV 17 1975

In re

JOHN J. GAL In Proceedings for  
Bankruptcy Judge GAY Arrangement

W. T. GRANT COMPANY,

No. 75 B 1735

Debtor.

ORDER

The within application having been brought on by an order to show cause returnable on October 29, 1975, wherein petitioner, Baltimore Gas & Electric Company, seeks an order:

1. Rescinding the orders of this Court dated October 2, 1975 and October 20, 1975, insofar as they enjoin Baltimore Gas & Electric Company from discontinuing gas and electric service to the debtor-in-possession; or, in the alternative
2. providing for the continuation of ~~tele-~~ <sup>Gas & Electric</sup> phone service by petitioner to the debtor-in-possession contingent upon the payment by the debtor-in-possession, in advance, to Baltimore Gas & Electric Company a deposit in the sum of \$56,017, representing two months' estimated billings.

And due notice of hearing having been given by service of said order to show cause, and after hearing said application of LeBoeuf, Lamb, Leiby & MacRae, attorneys for Baltimore Gas & Electric Company, by G. S. Peter Bergen, Esq., of counsel, in support thereof, and Wachtell, Lipton, Rosen & Katz, attorneys for W. T. Grant Company, debtor-in-possession, by Theodore Gewertz, Esq., of counsel, in opposition thereto, upon the verified petition of Baltimore Gas & Electric Company by its



attorneys, LeBoeuf, Lamb, Leiby & MacRae, sworn to October 24, 1975, and the exhibits thereto, and the affidavit of W. A. Harvey of Baltimore Gas & Electric Company, sworn to October 31, 1975, in support of the petition and the affidavit of Robert J. Kelly of W. T. Grant Company, sworn to October 28, 1975, in opposition thereto, and upon all the proceedings had before me, and after ~~the~~ deliberation, and sufficient cause appearing to me therefor, and upon this Court's oral opinion set forth in the transcript of the hearing held on November 5, 1975; it is

ORDERED, that the application of petitioner, except as otherwise provided herein, be and the same hereby is granted to the extent provided herein; and it is further

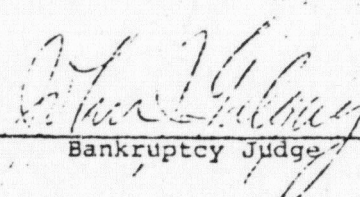
ORDERED, that the debtor-in-possession be and it hereby is directed to pay to petitioner promptly upon service of this order with notice of entry thereof a deposit equal to one month's estimated billings by petitioner to the debtor-in-possession, which shall initially be in the sum of \$28,009 or such other amount which shall be agreed upon by the parties, subject to modification from time to time in accordance with actual billing experience; and it is further

ORDERED, that petitioner be and the same hereby is restrained from terminating gas and electric service to the debtor-in-possession subject to the condition that the debtor-in-possession shall pay to petitioner all bills for current gas and electric service to said debtor-in-possession within ten (10) days following the debtor-in-possession's receipt of such bills as rendered by petitioner; and it is further

ORDERED, that upon the debtor-in-possession's failure to make said current payments when due, then the petitioner shall be entitled forthwith to an additional deposit of \$10,773 or a sum equal to 5/13 of the amount then on deposit by the debtor-in-possession with the petitioner, without further order of this Court as a condition for continuation of gas and electric service by petitioner to the debtor-in-possession; and it is further

ORDERED, that in all other respects the petition be and the same hereby is denied.

Dated: New York, New York  
November 17<sup>th</sup> 1975.

  
\_\_\_\_\_  
Bankruptcy Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of :  
W.T. Grant Company, : No. 75 B 1735  
Debtor-in-Possession, :  
Baltimore Gas and Electric :  
Company, : NOTICE OF APPEAL  
Petitioner-Appellant, : TO DISTRICT COURT  
-against- :  
W.T. Grant Company, :  
Respondent-Appellee. :

----- x

Baltimore Gas and Electric Company, the petitioner, appeals to the District Court from the order of the Bankruptcy Court (Galgay, J.) entered in this case on November 17, 1975 which denies the petition of Baltimore Gas and Electric Company dated October 24, 1975 for an order rescinding certain previous orders of this Court concerning the furnishing of gas and electric service to W.T. Grant Company, debtor-in-possession; which denies Baltimore Gas and Electric Company's demand that a deposit in the sum of \$56,017 be paid to Baltimore Gas and Electric Company by W.T. Grant Company as security for two months gas and electric service; and which orders certain other and different relief than that prayed for by Baltimore Gas and Electric Company.

The respondent to the order appealed from is W.T. Grant Company, and the name and address of its attorneys is Wachtel, Lipton, Rosen & Katz, 299 Park Avenue, New York, New York 10017.

DOCUMENT No. 11

LE BOEUF, LAMB, LEIBY & MacRae  
SERVED BY \_\_\_\_\_  
MAILED BY \_\_\_\_\_  
RECEIVED BY \_\_\_\_\_  
MAILED BY \_\_\_\_\_  
FILED BY \_\_\_\_\_  
CONFIRMED BY \_\_\_\_\_  
ALL & H. C. 11/17/75

JA-123

LeBOEUF, LAMB, LEIBY & MacRAE

By Samuel M. Sugden  
Samuel M. Sugden

140 Broadway  
New York, New York 10005

Dated: New York, New York  
November 19, 1975

Of Counsel  
G.S. Peter Bergen



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter of	:	
W.T. GRANT COMPANY,	:	
Debtor-in-Possession,	:	No. 75 B 1735
BALTIMORE GAS AND ELECTRIC COMPANY,	:	
Petitioner-Appellant,	:	DESIGNATION OF CONTENTS OF RECORD ON APPEAL AND STATEMENT OF ISSUES
-against-	:	
W.T. GRANT COMPANY,	:	
Respondent-Appellee.	:	

-----x

The appellant above named, having filed a Notice of Appeal on November 19, 1975, hereby designates the following for inclusion in the record on appeal and herein sets forth a statement of the issues it intends to present on the appeal:

DESIGNATION OF CONTENTS OF RECORD

- (1) Notice of Appeal by Baltimore Gas and Electric Company dated November 19, 1975.
- (2) Order appealed from, being the order of Honorable John J. Galgay, dated November 17, 1975, together with notice of entry thereof, dated November 19, 1975.
- (3) Order to show cause and petition of Baltimore Gas and Electric Company (with exhibits), dated October 24, 1975.
- (4) Affidavit of Robert J. Kelly on behalf of W.T. Grant Company, dated October 28, 1975, in opposition to petition of Baltimore Gas and Electric Company.
- (5) Affidavit of W.A. Harvey on behalf of Baltimore Gas and Electric Company, dated October 31, 1975.
- (6) Order of October 2, 1975 (Galgay, J.) authorizing W.T. Grant Company, debtor-in-possession, to operate and manage business, etc.

11/24/75

CAS

DOCUMENT No. 15

11/24/75

11/24/75 (CJW)

JA-125

(7) Exhibit "A" to W.T. Grant Company's petition for authorization to operate and manage its business as a debtor-in-possession, dated October 2, 1975.

(8) Exhibit "D", entitled "Affidavit to Local Bankruptcy Rule IX-2", by Robert H. Anderson, to W.T. Grant Company's petition to operate and manage its business as a debtor-in-possession, dated October 2, 1975.

(9) Transcript of hearings held October 29 and November 5, 1975 relating to petition of Baltimore Gas and Electric Company for a two month deposit as security for continued gas and electric service to W.T. Grant Company.

STATEMENT OF ISSUES

(1) Does the Bankruptcy Court have jurisdiction to enjoin the discontinuance of electric or gas service by a utility to a debtor-in-possession where the debtor-in-possession has failed to pay a deposit rightfully demanded under state law, regulations and tariffs?

(2) When procedures are provided by valid state law for determining the amount and appropriateness of a deposit to be paid by a customer as security for continued electric and gas public utility service, does the Bankruptcy Court have the authority to determine, inconsistent with valid state law, the amount and appropriateness of such deposit to be paid by a debtor-in-possession as security for continued electric and gas public utility service?

Yours, etc.

LeBOEUF, LAMB, LEIBY & MacRAE

By Samuel M. Sugden  
Samuel M. Sugden

140 Broadway  
New York, New York 10005

Dated: New York, New York  
November 28, 1975

Of Counsel

G.S. Peter Bergen

- 2 -



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

In re :  
W. T. GRANT COMPANY, :  
Debtor. : In Proceedings for  
: an Arrangement  
: No. 75 B 1735  
----- x

BALTIMORE GAS AND ELECTRIC COMPANY, :  
Petitioner-Appellant, : APPELLEE'S DESIGNATION  
-against- : OF ADDITIONAL PAPERS  
W. T. GRANT COMPANY, : TO BE INCLUDED IN  
Respondent-Appellee. : RECORD ON APPEAL  
----- x

W. T. Grant Company, Debtor, the appellee in the  
above-entitled appeal, hereby designates, pursuant to Rule  
806 of the Rules of Bankruptcy Procedure, the following addi-  
tional papers to be included in the record on appeal herein:

1. "Supplemental Order Enjoining Baltimore  
Gas And Electric Company From Discontinuing Service  
To Debtor-In-Possession", dated October 20, 1975;
2. "Application For Order Authorizing Debtor-  
in-Possession To Operate And Manage Business, To  
Use Collateral, To Borrow Money and Issue Certificates  
of Indebtedness", dated October 2, 1975.

Dated: New York, New York  
December 3, 1975.

DOCUMENT No. 16

RECEIVED, LAMB, LEIBY & MacRae

SERVED

MAIL

HAND

RECEIVED

MAIL

HAND

FILED

CONFORMED

LEE & M. ENTIN

WACHTELL, LIPTON, ROSEN & KATZ  
Attorneys for Appellee W. T. Grant  
Company, Debtor

By Michael Sweet  
A Member of the Firm  
299 Park Avenue  
New York, New York 10017  
Tel. No. (212) 371-9200

TO:

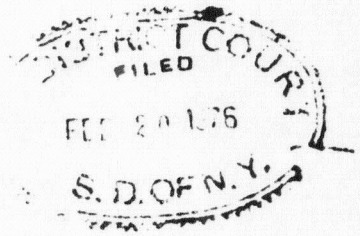
HON. JOHN J. GALGAY  
Bankruptcy Judge  
United States District Court  
For the Southern District of  
New York  
Foley Square  
New York, New York 10007

LE BOEUF, LAMB, LEIBY & MACRAE  
Attorneys for Appellee Baltimore  
Gas & Electric Co.  
140 Broadway  
New York, New York 10005



COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
In The Matter of W. T. GRANT COMPANY, :

Debtor-in-Possession :

BALTIMORE GAS and ELECTRIC COMPANY, :

Petitioner-Appellant, : 75 B 1735

-v-

W. T. GRANT COMPANY, :

Respondent-Appellee. :  
-----

H43920

APPEARANCES

LE BOEUF, LAMB, LEIBY & MacRAE  
G. S. Peter Bergen  
Samuel M. Sugden  
Craig A. Seledoe [Of Counsel]  
140 Broadway  
New York, New York 10005

Attorneys for Petitioner-Appellant

WACHTELL, LIPTON, ROSEN & KATZ  
Theodore Gewertz  
Robert B. Mazur [Of Counsel]  
299 Park Avenue  
New York, New York 10017

Attorneys for Respondent-Appellee

CONSTANCE BAKER MOTLEY, D. J.

LE BOEUF, LAMB, LEIBY & MacRAE

SERVED

MAIL \_\_\_\_\_ BY \_\_\_\_\_

HAND \_\_\_\_\_ BY \_\_\_\_\_

RECEIVED

MAIL \_\_\_\_\_ BY \_\_\_\_\_

FILE \_\_\_\_\_

DOCUMENT No. 23

O P I N I O N

This is an appeal from an order of Bankruptcy Judge John J. Galgay entered November 17, 1975. The order granted in part and denied in part the petition of Baltimore Gas & Electric Company (BG & E). The petition of BG & E had sought, in essence, 1) the vacation of orders previously entered by Judge Galgay enjoining discontinuance of its services to the debtor-in-possession, W. T. Grant; or, in the alternative, 2) an order conditioning continuance of services upon a deposit by the DIP of \$56,017, representing two months' estimated billing. Judge Galgay denied the first request, but he conditioned continued service upon the following:

- 1) a deposit equal to one month's estimated billing which shall initially be in the sum of \$28,009 or such other amount as shall be agreed upon, subject to modification from time to time in accordance with actual billing experience;
- 2) payment by Grant of all bills for current gas and electric within ten days following receipt of same;
- 3) a further forthwith deposit of \$10,733, or a sum equal to 5/13ths of the amount then on deposit, without further order, for failure of Grant to make current payments when due.



BC & E has appealed from the relief granted and presents by its Statement of Issues on appeal the following questions for determination:

1. Does the Bankruptcy Court have jurisdiction to enjoin the discontinuance of electric or gas services by a utility to a debtor-in-possession where the debtor-in-possession has failed to pay a deposit rightfully demanded under state law, regulations, and tariffs?

2. When procedures are provided by valid state law for determining the amount and appropriateness of a deposit to be paid by a customer as security for continued electric and gas public utility service, does the Bankruptcy Court have the authority to determine, inconsistent with valid state law, the amount and appropriateness of such deposit to be paid by a debtor-in-possession as security for continued electric and gas public utility service?<sup>1/</sup>

The order of November 17, 1975 is affirmed for the reasons which follow.

On October 2, 1975 Bankruptcy Judge Galgay entered an order permitting Grant to operate and manage its business as a debtor-in-possession pursuant to Chapter XI of the Bankruptcy Act. The order included a provision which reads as follows:

"Ordered that all persons, firms and corporations, be, and they hereby are, enjoined from disturbing or interfering with utility services, including, but not limited to, the furnishing of gas, heat, electricity, water, telephone (present telephone numbers) or any other utility of like kind furnished the debtor and are hereby enjoined from cutting off or discontinuing any such utility or services to the debtor-in-possession except upon further order of this Court" (at p. 4).

Thereafter, on October 6, 1975, BG & E's Credit Supervisor wrote Grant's vice-president requesting a deposit of \$56,017.00 by October 14, 1975 as security for service at several Grant locations in Maryland. Grant, according to the letter of October 6, 1975, had made application for such service in its new capacity as debtor-in-possession. Grant had been advised in the October 6, 1975 letter that service would be "turned off" on October 14, 1975 if the requisite deposit was not made. Grant responded by forwarding a copy of Judge Galgay's order of October 2, 1975. Thereafter, on October 20, 1975, Grant secured a supplemental order from Judge Galgay



specifically prohibiting BG & E from discontinuing electric and gas service.

On October 24, 1975, BG & E secured from Judge Galgay an order directing Grant to show cause why the October 2nd and 20th orders should not be rescinded and/or Grant required to post the requested security. The matter came on for hearing on October 29 and November 5, 1975. Thereafter, Judge Galgay entered his November 17, 1975 order from which this appeal is taken.

Under regulations promulgated by the Maryland Public Service Commission, BG & E "may" require from any customer or prospective customer a cash deposit intended to guarantee payment of final bills for service.<sup>2/</sup> The regulations further provide that for failure of the customer to provide the requested deposit, service "may" be refused or discontinued.<sup>3/</sup>

BG & E argues that since its duly filed tariffs with the Maryland Public Service Commission include the provision permitting it to require a cash deposit of not more than the estimated charges for two consecutive billing periods, this tariff provision has the force and effect of Maryland law. Thus, BG & E argues, the orders of Judge Galgay have the effect of permitting the DIP to operate its business contrary to the requirements of valid state law in violation of the Bankruptcy

Act. Title 28 U.S.C. § 959(b) provides as follows:

"A trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

The short answer to this argument appears on the face of the statute. BG & E is not required by Maryland law to demand a deposit. It is merely permitted by law to make such a demand up to the specified limit in the exercise of its business judgment and may make its service to a customer conditioned on such cash deposit. Judge Galgay, therefore, has not permitted Grant to operate its business in violation of a valid state law within the plain language of § 959(b). The court agrees with Grant's contention that Maryland law simply authorized BG & E to make certain contractual arrangements with its customers. However, such contractual rights are



superceded by applicable provisions of federal law in the event of insolvency or bankruptcy proceedings, Matter of Fontainebleau Hotel Corp., 508 F.2d 1056 (5th Cir. 1975); In re Kassuba, 396 F.Supp. 324, 326-27 (N.D. Ill. 1975); Matter of Penn Central Transportation Co., 328 F.Supp. 1276 (E.D. Pa. 1971), aff'd, 467 F.2d 100 (3rd Cir. 1972), and must be subordinated where required in the interest of effective reorganization under Chapter XI. cf. Smith v. Hoboken R.R., 328 U. S. 123, 132-33 (1946); R.F.C. v. Kaplan, 385 F.2d 791, 797 (1st Cir. 1950).

Two appellate courts have recently denied similar requests by public utility companies from companies involved in insolvency proceedings despite the existence of state law or utility tariffs authorizing customer deposits. Matter of Fontainebleau Hotel, supra; Matter of Penn Central Transportation Co., supra.<sup>4/</sup> The rationale of these cases was that the Federal Bankruptcy Laws take precedence over conflicting state law. Perez v. Campbell, 402 U. S. 637 (1971).

The Bankruptcy Court has exclusive jurisdiction over the debtor and his property wherever located. 11 U.S.C. § 711. In the Matter of Hartfield-Zodya, Inc., et al., 74 B 1633,<sup>5/</sup> Judge Galgay correctly ruled that the flow of money from the debtor-in-possession's bank account necessarily comes

under the control of the Bankruptcy Court in its attempt to administer a plan of arrangement, 11 U.S.C. § 741, and, in connection therewith, the Bankruptcy Judge has the power to issue injunctive orders in aid of its jurisdiction such as those issued on October 2nd and 20th 1975. 11 U. S. C. § 11.

Judge Galgay ruled further that it is the duty of a Bankruptcy Judge under Chapter XI "to confirm the arrangement or plan and to release a debtor strong enough to go out again in the business world and survive." In Re Lawrence Products Co., 211 F.Supp. 301 (D.C. Ala. 1962). Judge Galgay also ruled that it is vital to the realization of this purpose that a Bankruptcy Court not hesitate to act as a court of equity.

In Hartfield-Zodys, Inc., supra, New York Telephone Company sought a similar two month deposit from the debtor-in-possession in that case. There, as in this case, the utility company asserted lack of jurisdiction in the Bankruptcy Court despite the existence of § 11 of Title 11 of the United States Code which confers on the Bankruptcy Courts "such jurisdiction at law and in equity as will enable them to exercise original jurisdiction under" the Act. An order similar to the one issued in this case, allowing the New York Telephone Company one month's deposit, was issued by Judge Galgay in the Hartfield-



Zody's case. There Judge Galgay ruled: "It stands to reason that where a Bankruptcy Court has determined that the continued use of telephone service is necessary for the rehabilitation of the DIP, the court, pursuant to its duty to oversee the flow of a DIP's funds, may determine what is a reasonable deposit. Further, the court may use its equitable powers under the Act to permanently enjoin the telephone company from discontinuing service so long as it has received a deposit and the DIP pays its bills promptly. This was precisely the action taken by Bankruptcy Judge Albert Parente in a case strikingly similar to the one at hand. In re Vogue Instrument Corp., (E.D.N.Y. - 73 B 921)."

Judge Galgay also premised his decision in Hartfield-Zody's on another consideration patently applicable here: "Certainly the debtor-in-possession can afford an additional \$13,000 in deposit to New York Telephone. But the New York Telephone Company is by no means the sole utility holding the DIP's money for security purposes. This court has already approved the payment of \$575,000 in security deposits. If the phone company can simply step in and demand that their security deposit be doubled, then so could every other state-regulated utility. The result of this cumulative pressure on the debtor-in-possession's operating funds could be devastating."

In this case BG & E noted that in Grant's petition under Chapter XI filed October 2, 1975, Grant claimed that as of that date it had 1,070 stores located in 40 states, had assets totaling \$1,016,776,243, and had liabilities totaling \$1,030,556,198, or liabilities exceeding assets by about 13.8 million and growing rapidly.

Judge Galgay did not deny the BG & E all relief requested. He allowed BG & E adequate protection when Grant was required by Judge Galgay's orders to post one month's security, pay all current bills, and to pay additional security in the event of default with respect to current payments. Therefore, contrary to BG & E's assertion in its brief, Judge Galgay did not fail to balance the equities and protect BG & E's paying customers from unfair burdens resulting from loss incurred by non-paying customers.

The Second Circuit's decision in Slenderella Systems of Berkeley, Inc. v. Pacific Telephone & Telegraph Company, 286 F.2d 488 (2d Cir. 1961), relied on by BG & E is not controlling authority. There the debtor-in-possession asserted a property right in a certain telephone number and sought the aid of the Bankruptcy Court in its efforts to retain the number or, in the alternative, an order requiring the utility



to advise a customer calling the number sought to be protected of the new number. There the court held that the debtor by the express terms of its contract with the utility had no property right to the number and, consequently, no property of the debtor was involved in that case over which the Bankruptcy Court could exercise its summary jurisdiction. Furthermore, the Court noted that the debtor in that case was not in possession of the number on the date of the filing of the petitions so as to authorize the Court to act to protect that possession.

In Slenderella, supra, the debtors also contended that their contract rights to continued service amount to property within the meaning of the Bankruptcy Act. In this connection the court ruled: "Where a substantial issue of law or fact exists as to title, and where the debtor was not in physical possession of the property on the date of filing his petition, the rights under contract should not be settled in a summary proceeding." (at 490) Judge Galgay ruled in Hartfield Zody that the property before him was the debtor's bank accounts. Such property of the debtor is plainly within the contemplation of § 711.

The Bankruptcy Court has entered an order (February 13, 1976) since this appeal came on for hearing (February 10,

1976) allowing Grant, pending an order of liquidation, 60 days to liquidate its assets. Contrary to the suggestion of Grant, the court finds that the present issue is not moot because it presents an issue which is capable of repetition yet evading review. Cf. Super Tire Engineering Co. v. McCorkle, 416 U. S. 115 (1974). Moreover, BG & E has been specifically enjoined by Judge Galgay's order of October 20, 1976 from disturbing or interfering with utility services furnished W. T. Grant Company, as debtor-in-possession, and from cutting off or discontinuing any such utility or services to said debtor-in-possession, except upon further order of the Bankruptcy Court. The order specifically provides that a willful violation will form the basis for a contempt proceeding, consequential and incidental damages, and punitive damages as the Court may deem appropriate.

For all of the foregoing reasons the order appealed from is affirmed in all respects.

Dated: New York, New York

February 20, 1976

---

CONSTANCE BAKER MOTLEY  
U. S. D. J.



FOOTNOTES

1. See BG & E's Statement of Designation of Contents of Record on Appeal and Statement of Issues filed December 31, 1975. In its brief on appeal filed January 8, 1976, BG & E changed the second issue to read as follows: "(2) Does the Bankruptcy Court have the authority to set, by order, the amount of deposit to be paid by a debtor-in-possession as security for continued electric and gas service, when procedures for determining the amount or the appropriateness of such deposits are provided by state law, regulations and tariffs and where Congress has provided that a debtor-in-possession must operate its business in accordance with state law?"
2. Maryland Public Service Commission Regulations 7.6, effective 8/1/74, attached to Order to Show Cause filed below on 10/24/75. See also pages 10-11 of BG & E Brief on Appeal filed 1/8/76. This provision states:

7.6 Customers' Deposits: The Company may require from any Customer or prospective Customer a cash deposit, determined in accordance with the applicable regulations of the Commission and the applicable rules or practices of the Company, intended to guarantee payment of final bills. Such deposit shall be not less than \$5 nor more in amount than two-twelfths of the estimated charge for the ensuing 12 months for residential service, nor more than the maximum estimated charge for two consecutive billing periods for nonresidential service or as may be reasonably required by the Company in

FOOTNOTES, cont'd

in cases involving service for short periods or special occasions. Simple interest on deposits at the rate of 6% per annum is paid by the Company to each Customer making such deposit for the time the deposit is required by the Company, provided, that no interest is paid unless the deposit is held longer than 90 days. Payment of the interest to the Customer is made annually if requested by the Customer, or at the time the deposit is refunded.

3. Maryland Public Service Commission Regulation 406 at p. 11 of BG & E Brief on Appeal filed in this Court on 1/8/76.

4. There are a number of similar unreported opinions which were furnished to the court in connection with this appeal as exhibits to Grant's appeal brief. One of these is an opinion by Judge Galgay. In the Matter of Hartfield-Zodys, Inc., 74 B 1633, March 12, 1975.

5. Decided March 12, 1975.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FEB 20 1976

SDNY

----- x  
In The Matter of W. T. GRANT COMPANY,  
Debtor-in-Possession :

BALTIMORE GAS and ELECTRIC COMPANY, :  
Petitioner-Appellant, :

75 B 1735

-against-

W. T. GRANT COMPANY,  
Respondent-Appellee. :

ORDER OF  
DISCONTINUANCE

FINAL JUDGMENT  
ENTERED

----- x  
This cause having duly come on to be heard  
before me and the attorneys for all parties having ap-  
peared and a final judgment having been entered, it is  
ORDERED that the above entitled action be and  
hereby is discontinued.

Dated: New York, New York  
February 20, 1976

*Constance Baker Motley*  
United States District Judge

MICROFILM

1976 FEB 20

DOCUMENT No. 25

JA-143

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In the Matter of  
W. T. GRANT COMPANY,  
Debtor-in-Possession,  
BALTIMORE GAS AND ELECTRIC COMPANY,  
Petitioner-Appellant,  
-against-  
W. T. GRANT COMPANY,  
Respondent-Appellee  
-----x

No. 75 B 1735  
NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that Baltimore Gas and Electric Company ("BG&E"), the above-named Petitioner-Appellant, hereby appeals to the United States Court of Appeals for the Second Circuit from this Court's opinion of February 20, 1976 and judgment entered February 23, 1976, affirming an order of Bankruptcy Judge John J. Galgay entered on November 17, 1975 which denied BG&E's petition for an order (1) conditioning continuance of service to Respondent-Appellee W. T. Grant Company ("Grant") upon payment by Grant of a deposit of \$56,017 and (2) vacating an order previously entered by Judge Galgay enjoining BG&E from discontinuing service to Grant except upon approval of the Bankruptcy Court.

Dated: New York, New York  
March 3, 1976

Yours very truly,

LeBOEUF, LAMB, LEIBY & MacRAE

By 5/  
G. S. Peter Bergen

Attorneys for Baltimore Gas and  
Electric Company  
Office and P. O. Address  
140 Broadway  
New York, New York 10005  
(212) 269-1100

To: Wachtell, Lipton,  
Rosen & Katz  
Attorneys for Respondent-  
Appellee W. T. Grant Company  
299 Park Avenue  
New York, New York 10017  
(212) 371-9200

FILED  
CONFIRMED  
MA & M ENTRY

DOCUMENT No. 26


JA-144



CERTIFICATE OF SERVICE

I hereby certify that the attached Joint Appendix has been served by mailing true copies thereof to Wachtell, Lipton, Rosen & Katz, Attorneys for Respondent-Appellee W. T. Grant Company, 299 Park Avenue, New York, New York 10017.

Dated: New York, New York  
April 30, 1976

  
\_\_\_\_\_  
Craig A. Seledee